



EMPLOYMENT TRIBUNALS

Claimant: Mr J Parnall

Respondent: Alfa Tail Lifts Ltd

Heard at: Bristol

On: 20th April 2026

Before: Employment Judge P Cadney

Representation:

Claimant: No Attendance

Respondent: Mrs A Singh (Solicitor)

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant has not complied with case management orders of the tribunal within the meaning of r38(1)(c) Employment Tribunal Rules of Procedure 2024;
- ii) The claimant has not actively pursued his claims within the meaning of r38(1)(d) Employment Tribunal Rules of Procedure 2024;
- iii) The claimant has not attended the hearing within the meaning of r47 Employment Tribunal Rules of Procedure 2024;
- iv) As a result the claimant's claims are struck out pursuant to the rules set out above.

Reasons

1. Non Attendance of the Claimant – The claimant had not attended the hearing by 10.00 a.m. and he was contacted by telephone. He did not respond and a voicemail message was left. By 10.15 he had not joined the hearing; not emailed or telephoned to indicate that he had any difficulty in joining; and had not responded to the voicemail message.

2. As is set out below, the case was originally listed for a 2 day CVP PH commencing at 10.00 am this morning; and so even if the claimant had not received or read the tribunal's email of 17th April 2026 converting the hearing to a 3 hour preliminary hearing (for the reasons set out below) he should still have joined anticipating that the two day hearing was still listed. In either event he should have joined, and in the circumstances the hearing proceeded in his absence and I made the orders given above.

3. Listing - This case came before EJ Bax for a TCMPh on 12th January 2026. He listed the case for a two day Preliminary hearing commencing today to determine the following issues:

- i) The Claimant's application under rule 49 for an anonymity order.
- ii) Whether at all material times to the claim the Claimant was disabled by reason of PTSD, anxiety and depression.
- iii) Finalising the list of issues
- iv) Listing a final hearing with associated case management directions.

4. In addition he gave the following directions

The Claimant must write to the Tribunal and the other side by 4:00 pm 27 February 2026 with the following further information:

10.1 To the Respondent only, the e-mails and paper report he says amounted to protected disclosures.

10.2 In relation to the claims of discrimination arising from disability in date order the allegations relied upon:

- (a) The date of the incident,*
- b) Who was involved*
- (c) A short description of what happened*
- (d) What arose from the disability that he says caused that treatment*

10.3 In relation to the reasonable adjustments claims:

- (a) The provision, criteria or practices relied upon*
- (b) Why he was put at a substantial disadvantage compared to non-disabled people*
- (c) What adjustments he suggests*

10.4 In relation to the claims of victimisation under s. 27 of the Equality Act 2010

- (a) What is the protected act or acts*
- (b) The date of each detriment relied upon*
- (c) Who was involved*

(d) A short description of what happened

10.5 What he says was breached in the ACAS code in relation to disciplinary and grievance procedures.

*13 The Claimant must write to the Respondent and the Tribunal and provide a written statement limited to 2,000 words by 4:00 pm **20 February 2026** which ought to contain the following information about each impairment:*

13.1 How long has the Claimant had the impairment?

13.2 What are/were the effects of the impairment on his ability to do day-to-day activities at the time of the alleged discrimination and the preceding year?

*The Claimant must by 4:00 pm **20 February 2026** send to the Respondent:*

14.1 Copies of the parts of his GP and other medical records that are relevant to whether he had the disability at the time of the events the claim is about. He may blank out anything that is clearly not relevant;

14.2 Any other evidence relevant to whether he had the disability at that time.

5. The claimant had not complied with those directions by the dates set out in the CMO, and has still not today.

6. Strike Out Application – On 6th March 2026 the respondent applied for the claimant's claims to be struck out pursuant to r38 Employment Tribunal Rules of Procedure 2024 for:

- i) The failure to comply with case management orders
- ii) The failure actively to pursue the claims.

7. The claimant resisted the application; asserting that:

- i) The delay in complying “arises from the exceptional and distressing nature of the issues involved..”
- ii) The circumstances being “deeply personal” and having “a profound psychological impact.. including depression and distress”;
- iii) The volume and sensitivity of communications;
- iv) His difficulty as a litigant in person with a mental health condition who has been assessed as not fit to work again;
- v) He has not been able to comply due to the ongoing psychological impact of the events;

vi) To strike out the claims would be disproportionate.

8. As a result today's hearing was converted to a 3 hour PH to determine:

- i) The respondents strike out application;
- ii) Subject to that to give any further case management directions

Respondent's Strike out Application

9. The respondent asserts that the claims should be struck out on the basis of rules 38 (1) (c) and 38(1) (d):.

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—

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

(d) that it has not been actively pursued;

10. The principles against which a strike out application should be considered are well known. In respect of each of those grounds the tribunal must also consider, in addition to whether those grounds are made out, whether a fair trial is still possible and, whether striking out is proportionate, as set out below:

Deciding the Application – In deciding a strike out application the tribunal is required to take into account (see *Weir Valves and Controls (UK) Ltd v Armitage* 2004 ICR 371, *EAT / Baber v Royal Bank of Scotland per Simler P paras 11-13*):

- i) The overriding objective to deal with cases fairly and justly (rule 3) and to consider all relevant factors including:
 - a) The magnitude of the non-compliance;
 - b) whether the default was the responsibility of the party or his or her representative;
 - c) whether the default was the responsibility of the party or his or her representative
 - d) what disruption, unfairness or prejudice has been caused
 - e) whether a fair hearing would still be possible, and

- f) whether striking out or some lesser remedy would be an appropriate response to the disobedience.

Baber v Royal Bank of Scotland per Simler P paras 11-13

11. (...) As is clear, non-compliance with Tribunal Rules or a Tribunal order is an express ground for a strike out decision; and can lead to striking out the whole or part of the claim or response. However, and critically, there is nothing automatic about a decision to strike out and such orders are not punitive.

12. It is common ground and accepted by Mr Campbell that in deciding whether to strike out a party's case for non-compliance, Tribunals must have regard to the overriding objective of seeking to deal with cases fairly and justly. That is the guiding principle and requires consideration of all the circumstances and, in particular, the following factors: the magnitude of the non-compliance; whether the failure was the responsibility of the party or his or her representative; the extent to which the failure causes unfairness, disruption or prejudice; whether a fair hearing is still possible; and whether striking out or some lesser remedy would be an appropriate response to the disobedience in question.

*13. Even in a case where the impugned conduct consists of deliberate failures in relation, for example, to disclosure, the fundamental question for any Tribunal considering the sanction of a strike out is whether the parties' conduct has rendered a fair trial impossible: see *Bolch v Chipman* [2004] IRLR 140 EAT where, having cited *De Keyser v Wilson* [2001] IRLR 324 EAT and *Arrow Nominees Inc v Blackledge* [2000] EWCA Civ 200, *Burton P* set out guidance for Tribunals when determining whether or not to make a strike out order, as follows:*

(i) There must be a finding that the party is in default of some kind, falling within Rule 37(1).

(ii) If so, consideration must be given to whether a fair trial is still possible and save in exceptional circumstances, if a fair trial remains possible, the case should be permitted to proceed.

(iii) Even if a fair trial is unachievable, consideration must be given to whether strike out is a proportionate sanction or whether there may be a lesser sanction that can be imposed.

(iv) If strike out is the only proportionate and fair course to take, reasons should be given why that is so.

See also James v Blockbuster Entertainment Ltd [2006] IRLR 630 CA to similar effect, where Sedley LJ recognised the draconian nature of the strike out power and that it is not to be readily exercised. He held, even where the conditions for making a strike out order are fulfilled, it is necessary to consider whether the sanction is a proportionate response in the particular circumstances of the case, and the answer to that question must have regard to whether the claim can be tried because time remains in which orderly preparation can take place, or whether a fair trial cannot take place."

Conclusions

11. Addressing those questions in order:-

12. Breach – In my judgement there has clearly been a breach of the CMOs in the failure to comply with the orders; and at no point prior to the strike out application had the claimant sought any extension of time in which to comply. Even after the strike out application and in anticipation of this hearing it does not appear that the claimant has made any attempt even partially to comply. Equally his failure to attend today's hearing at which the issues could be discussed and further directions given if the claims were not struck out, is the clearest evidence that the claims are not being actively pursued.

13. Fair Trial - Clearly if the claims are not being actively pursued a fair trial is not possible. Equally a fair trial involves not just a final hearing but a fair process leading to it. The process is no further forward than it was in January and the respondent still does not know the case it has to meet or the evidence in support of the contention that the claimant was a disabled person at the relevant time. It is now over three months since the original directions were given, and there is no suggestion or evidence that the claimant has made any attempt to comply. If he has, he has not stated in writing what he has done, and has not attended today to explain how much more time he would need. All the tribunal is left with is the vague hope that if the claimant were given further time he might comply. In the end it is for the claimant to persuade the tribunal that with more time he will be able to, and will, comply, and today's hearing was his opportunity to do so. By not attending he has necessarily not attempted to persuade the tribunal to give him further time.

14. Sanction – In my judgement simply the hope based on no evidence is not sufficient to give the claimant further time in which to comply, particularly as the claimant has not attended today's hearing; for which the claims can be struck out in any event pursuant to r47.

15. In the circumstances the claims will be struck out.

Employment Judge P Cadney
Dated: 20th April 2026

JUDGMENT SENT TO THE PARTIES ON
05 May 2026