



EMPLOYMENT TRIBUNALS

Claimant: Mr Daniel Perkins
Respondent: Pimlico Plumbers
Heard at: London South Employment Tribunal via CVP
On: 08 April 2026
Case number: 6022623/2024
Before: Employment Judge M Da Costa sitting alone

ATTENDANCE AND REPRESENTATION

Claimant: In person, unrepresented
Respondent: In person, represented by Mr Mark Stephens of counsel

WRITTEN REASONS FOR A JUDGMENT

Background

1. The claimant had under case number 6022623/2024 brought claims for unfair dismissal, unlawful deduction of wages and direct discrimination on the ground of disability.
2. The case was listed on 08 April 2026 for 2 days for a trial of the question of the claimant's employment status.
3. On 08 April the respondent made an application to strike out the claimant's claims in their entirety on grounds of alleged failures by the claimant under rule 38(b), (c) and (e) of the Employment Tribunal Procedure Rules 2024.
4. Upon hearing both parties on 08 April 2026, my decision was to strike out all the claimant's claims in their entirety on the grounds pleaded by the respondent. I gave reasons for the decision orally on that day and wrote a summary judgment (without reasons) later that day which was promulgated on 10 April.
5. Later in the day on 08 April 2026 the respondent requested written reasons for my decision.

REASONS

6. The claimant made a claim by way of an ET1 form presented on 19 December 2024 for unfair dismissal, discrimination on the ground of disability and non-payment of “other payments”.
7. The respondent applied to strike out the claimant’s case in its entirety pursuant to rule 38(b), (c) and (e) of the Employment Tribunal Procedure Rules 2024 (“the Rules”). He made oral representations in support of the application on 08 April 2026. On 08 April 2026 the claimant was in Barcelona, Spain. He joined from there by video link and I permitted him to make oral representations pursuant to rule 38(2) opposing the respondent’s application to strike out.
8. Spain is not a state that has given standing permission for UK citizens to give evidence from outside of the UK, and the claimant had not made any efforts to seek the permission of the local authorities via the rules provided in the Presidential Guidance. Therefore, the Tribunal could not move to the stage where it considered whether to give permission for evidence to be given by the claimant from Spain. The claimant said that he would be in Barcelona for 3 days. However, I took the view that he could make representations in opposition to the respondent’s strike out application without providing evidence.
9. The respondent relied on rules 38(1)(b), (c) and (e) of the Rules. As a corollary, he relied on the overriding objective at rule 3, placing particular weight on rule 3(2)(a), (d), (e) and 3(4).
10. As to rule 38(1)(c) Mr Stephens for the respondent took me through the chronology of certain events as follows:
 - (a) In advance of the preliminary hearing of the case set for 23 September 2025, the parties were ordered on 10 April 2025 to make disclosure of documents on which they would seek to rely by 5 June 2025, and to send each other witness statements by 3 July 2025.
 - (b) There was then an application by the respondent for specific disclosure. The respondent said that this was because the claimant had failed to comply with the order of 10 April 2025 to provide documents that were relevant to what work his company was doing and who was paying him for it.
 - (c) The Tribunal on 14 August 2025 decided that those documents were disclosable because they went to issues in the case and it was proportionate to require their disclosure. It ordered specific disclosure of copies of bank statements for Monkey Wrench Plumbing and Heating Ltd (MWP) and for the claimant from September 2021 to the present, copies of management accounts for MWP for the same period, and copies of any tax returns for MWP from October 2021 to the present.

- (d) The specific disclosure was not complied with fully and on 12 September the respondent wrote to the claimant at both his email addresses to explain what was outstanding.
- (e) On 14 October 2025 the respondent applied for an unless order to compel disclosure of the specific documents that had not been disclosed under its application for specific disclosure. It explained why these were necessary, namely to enable the Tribunal to determine the claimant's employment status fairly, noted that no response had been received at all to its email to the claimant chasing the documents, and put on record its concern that the claimant's non-compliance would continue and that this would put the preliminary hearing of 27-28 November 2025 at risk.
- (f) On 30 October 2025 the respondent applied to vacate the preliminary hearing of 27-28 November because of the claimant's continuing failure to comply with the specific disclosure order of 14 August 2025. The hearing was vacated and re-set for 8 and 9 April 2026.
- (g) The application for an unless order had not been disposed of and was renewed by the respondent on 21 December 2025. The application repeated the rationale that the Tribunal had given for the specific disclosure order on 14 August 2025. It also repeated its concern that the claimant's non-compliance would continue and that this would put the new preliminary hearing at risk. It said specifically that it was concerned about the costs of both parties would be wasted.
- (h) The Tribunal then wrote to the claimant on 26 February 2026 saying that he had still not complied with the order for specific disclosure. The letter stated specifically that what the claimant had provided so far did not comply with its specific disclosure order of 14 August 2025 for documents to be provided by 28 August 2025. It recorded in terms the judge's opinion that it was highly unlikely that some of the further documents sought and not provided did not exist. It contained a specific warning that failure to comply might lead to the claimant's case being struck out and that the judge was considering striking out on the basis of non-compliance with the specific disclosure order of 14 August 2025.
- (i) The respondent renewed its strike out application on 17 March 2026 and at paragraph 11 of that application set out specifically what was missing, namely (a) self-assessment tax returns for 2021, 2022 and 2023, (b) clarifications/explanations about which documents do or do not exist, and (c) written representations to the Tribunal in relation to why the claimant's claim should not be struck out.
- (j) Correspondence was then sent by the respondent to the claimant in the days leading up to the listing of 08 April 2026, asking for co-operation in relation to exchange of witness statements and agreement of the bundle index. No

response was received. The only response received was on 07 April 2026 saying that the claimant would be participating from out of the country but not saying where he would be.

11. On the basis of the events above, I made the following findings of fact:
 - (a) There is no doubt whatsoever that the claimant had failed to comply with the orders of the Tribunal dated 10 April 2025 and 14 August 2025. The request for specific disclosure was never complied with and the Tribunal's own correspondence to the claimant following that up on 26 February was never complied with. The claimant does not deny this. This means that the strike out ground in rule 38(1)(c) is made out.
 - (b) The claimant was in the context of the proceedings thus far, and specifically in relation to multiple efforts by the respondent to resolve the breaches, entirely and 100% unresponsive and unco-operative.
 - (c) In the proceedings before 08 April 2026, the claimant entirely failed to provide explanations about what documents were or were not available and about the meaning behind the movements in his back account. This means that, as at 08 April 2026 the respondent had been unable to come to a properly informed view about them.
12. On 08 April in oral argument the claimant countered the finding at paragraph 11(c) immediately above, by saying that he had supplied everything that he had been asked for, and that there was sufficient material in the bundle to proceed on 08 April 2026 to decide his employment status. He denied the need for witness statement evidence of his own, and in answer to my question whether he thought critical information was lacking he posed a question back as to how management accounts would assist.
13. I found the claimant's responses as to his non-compliance to be inadequate. I decided that it was not open to him to decide unilaterally what is and is not determinative by way of evidence. That is a matter for the Tribunal, and it is unfair for the respondent to be put in a position where they cannot test absent evidence. The Tribunal cannot evaluate the importance of evidence that it has not seen. It is incumbent on the claimant to produce it and explain his view of it. On 08 April 2026 the claimant advanced that no further documents exist, but he had never stated that before. I decided that in light of his non-engagement, I was entitled to question the credibility of his assertion that there was no further evidence. On that basis I found that it was entirely possible that further undisclosed evidence might exist. Finally, I decided that it was not open to the claimant unilaterally to decide whether he saw fit or did not see fit to comply with Tribunal orders for the specific disclosure of specific documents on the basis of whether he personally thought those documents were helpful.
14. Mr Stephens for the respondent also submitted that the "unreasonableness" aspect of rule 38(1)(b) was satisfied. He submitted that "unreasonableness" in this

context meant a lack of a reasonable explanation and that in this case it was worse because there had never been any explanation whatsoever for the claimant's lack of engagement. He submitted that this lack of engagement had contributed to work and costs which were entirely avoidable. I found as facts the following:

- (a) The claimant could and should have given the explanations that he gave on 08 April 2026 (as to the sufficiency of the evidence) a year before that date.
 - (b) Undoubtedly, his failure to do so contributed to costs and work that was unnecessary therefore wasted, and that failure did cause the preparation of the case to be disrupted including the Tribunal's time thus far to be significantly wasted.
 - (c) This means his conduct was unreasonable.
 - (d) On that basis, the strike out ground in rule 38(1)(b) is made out.
15. Mr Stephens for the respondent made submissions in relation to rule 38(1)(e). They were that the respondent's ability to defend the case as at 08 April 2026 (if it had gone to a full hearing as to employment status) had been significantly compromised because they had not been able to prepare for assertions that the claimant might make in evidence and therefore their ability to seek to rebut them with the benefit of warning had been reduced. I agreed. The lack of engagement of the claimant would have caused a significant unfairness to the respondent for that reason, had the Tribunal proceeded to a hearing of the claimant's employment status on 08 April 2026. The balance of that unfairness would in my view have fallen disproportionately on the respondent.
16. Mr Stephens finally submitted that the claimant having absented himself on 08 April 2026 to a jurisdiction from where he could not give evidence was a further significant unfairness because it meant that, were the Tribunal to have proceeded to a hearing, the claimant could not have been cross-examined. I agreed. That unfairness had undoubtedly been produced by reason of the claimant's absence from the jurisdiction. The claimant gave a reason for his being in Barcelona that I accepted as entirely legitimate namely to accompany his son on an important national football tournament. However, I decided that the existence of a legitimate reason for absence from the jurisdiction did not reduce the unfairness to the respondent that had been occasioned. The claimant had known well in advance of 08 April 2026 that the hearing had been listed, and the obligation was on him to attend, or to seek a postponement more than 7 days beforehand. In view of the history of this case as described above, I decided that it would in any event be highly unlikely that the Tribunal would give permission for a postponement even if the respondent's strike out application failed.
17. On the basis of the above, I found that the strike out ground in rule 38(1)(e) is made out.

18. With respect to the claimant, his assertions on 08 April 2026, amounting to a view that it did not matter that he had failed to comply with Tribunal orders because the evidence was here on the day in front of us, misses the point behind the grounds for strike out in rule 38. Those rules seek to regulate the proper conduct of proceedings and are their existence is not “open to negotiation” by any party. They are instead to be assessed in light of the tests that, on their face, they state.
19. The respondent has provided the Tribunal with a full authorities’ bundle. He took me to the authority of Arrow Nominees v Blackledge [2000] EWCA Civ 20, [2001] B.C.C. 59 which establishes that if a court finds that a party has been frustrating a fair trial, to proceed with the trial would be unfair to all the parties, and that to stop a trial in those circumstances does not constitute punishing a party. Instead, to stop a trial in those circumstances would be to achieve justice between the parties, or put the other way around, it would be unsafe and therefore give rise to a substantial risk of injustice to proceed. I decided that the case before me on 08 April 2026 was in my view on all fours with Arrow Nominees. I found as a fact that the claimant had frustrated the fairness of the hearing listed for 08 April 2026 by reason of his prior conduct and his not being in the jurisdiction for the hearing, and therefore to proceed would be unsafe and unfair. Mr Stephens also pointed me to the dictum on page 39 paragraph G of that case where it is said that the deliberate and successful suppression of a document is a serious abuse that can merit the exclusion of an offender from all other participation in a trial. I found as a fact above that, in all the circumstances of the case, the claimant’s credibility in asserting that the missing documents do not exist was in doubt. In that respect too, I decided that the case before the Tribunal was on all fours with Arrow Nominees.
20. Mr Stephens for the respondent also took me to the EAT authority of Bolch v Chipman [2004] IRLR 140. The importance of this case is that firstly it applies the Arrow Nominees principle to proceedings in the Employment Tribunal, and secondly that even after the fair trial test is applied under what is now rule 38(1)(e), the Tribunal must have regard to whether it is a proportionate response to strike out or whether some other more proportionate remedy could be applied. He submitted that in our case, there was no other response available to me, other than strike out, that would be appropriate. I agreed. There was a clear history by the claimant of entire disregard for the proper conduct of this case. That produced marked unfairness to the respondent, as well as practical prejudicial results to the respondent in terms of wasted time and costs. I could not see how it could possibly be fair and proportionate firstly to allow that prejudice to crystallise further on 08 April 2026 by proceeding even if the claimant were to participate without giving evidence. The claimant had received a clear prior warning, in specific terms, about the possible result of his conduct in the form of strike out. He had done nothing to address or to mitigate that. I decided that if the Tribunal were to postpone, to seek to address the claimant’s prior failures, there is no reason to believe that they would in fact be addressed, or that they would not continue. In those terms, I decided that to postpone on 08 April 2026 would clearly violate the overriding objective in rule 3. For those reasons I decided that there was therefore no other disposal other than strike out that would be proportionate.

21. The claimant's case is struck out in its entirety for the reasons given above.

Approved by:
Employment Judge Da Costa
Date: 9 June 2026

Sent to the parties on:
Date: 17 June 2026

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