



EMPLOYMENT TRIBUNALS

Claimant: Sam Graves
Respondent: Carlton De Souza
Heard at: Bristol Civil and Family Justice Centre
On: 16 July 2026
Before: Employment Judge David C. Gardner

Appearances:

For the Claimant: The Claimant did not attend and was not represented

For the Respondent: Mr De Souza (representing himself)

JUDGMENT

1. Pursuant to Rule 47 of the Employment Tribunal Rules 2024, the hearing proceeded in the absence of the Claimant.
2. Pursuant to Rule 38 of the Employment Tribunal Rules 2024, all complaints brought by the Claimant in his claim filed on 21 February 2025 are struck out.

REASONS

Introduction

1. On 14 May 2026, the Respondent wrote to the Tribunal requesting this claim be struck out for the Claimant's failure to comply with orders of the Tribunal. On 19 May 2026, the Tribunal wrote to the claimant seeking a response to the application. Emails were received from the Claimant on 22 May 2026, none of which appeared to address the strike out application. On 29 May 2026, the Tribunal wrote to the parties informing them that Employment Judge Gray had directed that the application for strike out, alongside any other matters raised, would be considered at the preliminary hearing already listed for 16 July 2026.
2. At this hearing I considered the application, which I would have raised on my

own initiative had an application not been made, as it appeared to me that this is a case apt to consider strike out, applying Rule 38 of the Employment Tribunal Procedure Rules 2024, because the claimant had not complied with multiple Orders of the Tribunal.

3. I am satisfied that the grounds for striking out the claim under Rule 38 are met and that it would be in accordance with the overriding objective in Rule 3 to strike out the claim which I so ordered. My reasons for this are below and require some detail on the history of the claim.

Background

4. Whilst the Claimant's ET1 claim for records that he began working for the Respondent on 1 December 2024, it was confirmed before Employment Judge O'Rourke in a hearing before him on 6 December 2025 that the Claimant was, on his own case, employed by the Respondent from 2-7 December 2024 (see paragraph 59 of the record of the preliminary hearing). That is a period of 6 days.
5. On 21 February 2025, the Claimant brought this claim by filing his ET1 claim form, alleging:
 - a) Unfair dismissal.
 - b) Automatic Unfair dismissal ('whistleblowing').
 - c) Disability Discrimination.
 - d) Breach of Contract / Wrongful Dismissal.
 - e) Unlawful Deduction of Wages.
6. As the Claimant was not employed for a period of 2 years, the unfair dismissal claim was struck out by Employment Judge O'Rourke on 19 November 2025 for want of jurisdiction.
7. This case has, since filing, been the subject of an exorbitant amount of case management by successive Employment Judges, each of whom was doing their best to ensure this case could progress and be dealt with fairly for both parties. The following is a summary of the directions such as is relevant to this case:
 - a) On 20 March 2025, Employment Judge Volkmer directed the Claimant to provide further and better particulars of his claim because "*it is not currently in a form which can be sensibly responded to*". The Claimant did provide further particulars.
 - b) On 8 May 2025, the Tribunal listed a preliminary case management hearing to take place on 19 November 2025 by telephone.
 - c) On 2 September 2025, Employment Judge Cadney directed the Respondent to supply a response as it had not done so and the claim was at risk of judgment being given for the Claimant for lack of response, pursuant to Rule 22 of the Employment Tribunal Rules 2024.
 - d) On 9 September 2025, Legal Officer Kent directed that the draft, email, response which had by then been filed by the Respondent be submitted

on form ET3 with an application for an extension of time to file the same. The Respondent did so and, on 12 November 2025, the Tribunal accepted the response.

- e) On 18 November 2025, the case was reviewed by Regional Employment Judge Pirani who directed that the video hearing listed to take place on 19 November 2025 would be a case management preliminary hearing.
- f) On 19 November 2025, Employment Judge O'Rourke conducted a preliminary hearing which both parties attended by video link. He struck out the unfair dismissal claim (see above), refined and confirmed the final issues in the case and set them out in a list of issues, and he made directions for a preliminary hearing to take place on 24 March 2026. That preliminary hearing was to determine the identity of the putative employer and whether the Claimant was employed by the Respondent or if he was self-employed. The case management directions included, as relevant to my decision, the following directions:
 - i) 17 December 2025 – Claimant to provide a schedule of loss.
 - ii) 7 January 2026 – Claimant to provide a written statement setting out his impairments, the effect of his impairments, and whether they are long term effects. This goes to establishing whether the Claimant is disabled within the terms of the Equality Act 2010 such as is relevant to his claim of disability discrimination.
 - iii) 7 January 2026 – Claimant to provide GP records relevant to his disability.
 - iv) 21 January 2026 – Parties to provide lists of mutual disclosure.
 - v) 11 February 2026 – Respondent to prepare a bundle of relevant documents.
 - vi) 25 February 2026 – Parties to exchange witness statements relevant to the issues of the identity of the putative employer and whether the Claimant was employed by the Respondent or if he was self-employed.
 - vii) 19 March 2026 – The Respondent to send the documents bundle and witness statements to the Tribunal.
- g) On 18 December 2025, as a result of allegations by the Respondent of harassing behaviours from the Claimant, Employment Judge O'Rourke was required to make directions discouraging such actions and noting that strike out applications could follow if such alleged behaviours continued.
- h) On 24 March 2026, Employment Judge Dawson conducted a preliminary hearing. The case was listed as a video hearing by Employment Judge O'Rourke and no application had been made to convert it to an in person hearing or a hearing by which the Claimant attended in person and the Respondent attend by video link (a 'hybrid'

hearing). However, the Claimant did attend in person and the Respondent attended by video. Arrangements were made for the Claimant to telephone into the video hearing. Employment Judge Dawson considered he was unable to determine the issues for which the hearing had been listed. That was principally for the following reasons and failures of the parties to comply with Employment Judge O'Rourke's directions:

- i) The Claimant had not provided evidence of disability.
- ii) The Claimant had not disclosed any documents relevant to his claim and the issues to be decided.
- iii) No agreed bundle of documents had been filed.
- iv) The Claimant had not filed a witness statement.
- v) The Respondent had provided two witness statements, neither of which appeared to deal with the issues to be determined at that hearing (namely the identity of the putative employer and whether the Claimant was an employee).
- vi) The Respondent himself had not filed a witness statement and, further, had dialled in from Portugal (where he now lives) and had not secured permission of the Portuguese Government to give evidence from abroad. As such he could not give evidence at the hearing. I pause to observe that the directions of Employment Judge O'Rourke contain several paragraphs on steps which need to be taken if proposing to give evidence from abroad, which were repeated in the subsequent order of Employment Judge Dawson.

As a result of neither party being in a position to address the issues, the Judge listed a further preliminary hearing to take place on 16 July 2026, in person, in Bristol Civil and Family Justice Centre.

- i) On 29 May 2026, Employment Judge Gray directed that the Respondent's application for strike out, dated 14 May 2026, and further issues raised by the parties relating to harassment, be considered at the preliminary hearing listed on 16 July 2026.
- j) On 8 July 2026, in response to a request by the Respondent sent on 6 July 2026 for a remote hearing and raising issues with the lack of documentation from the Claimant, Regional Employment Judge Pirani made directions, which included:
 - i) The hearing on 16 July 2026 was an in person hearing and was listed in that format by consent.
 - ii) The parties did not appear to have filed evidence, documents, or bundles as required by Employment Judge Dawson's order, and they should confirm the position by return.
 - iii) The Judge warned; "*Both parties should be aware that failure to*

comply with case management orders may lead to the claim or response being struck out. This case has already been subject to several hearings and considerable case management”.

8. This lengthy chronology of judicial management brings the case up to the point where it came before me on 16 July 2026.
9. On 15 July 2026, 17:20, the Respondent sent an email to the Tribunal stating he could not travel to Bristol due to deterioration in his health, namely degenerative changes affecting four levels of his lumbar spine. He attached evidence of this condition, which appears to confirm the existence of the condition, albeit not the severity or any confirmation that he could not travel. As such, the Respondent renewed his request to attend by video or, in the alternative, that the hearing be adjourned to a date when he was fit to attend. He also noted he had still not received documentation from the Claimant.
10. On 16 July 2026, 06:20, the Claimant emailed to inform that he did not object to an adjournment but would object to the hearing not being an in person hearing. He also stated that he had in fact tried to telephone the Tribunal the week before (without answer) to inform he was seeking help from Bristol Law Centre.
11. I was made aware of the above two emails by my clerk at 08:05 on 16 July 2026. I asked my clerk to telephone the parties to inform I intended to proceed with the hearing to make what progress I could. I anticipated that the Claimant would attend in person, in line with previous directions, but that despite the Respondent not having leave of the Tribunal to attend remotely the Respondent would not be in attendance in person. That would no doubt have negatively effected the Respondent's case before me (see below) but I was nonetheless keen to make progress given the lengthy history of delays in the case. As such, I asked my clerk, when speaking to the parties to confirm that the hearing would go ahead but I would be willing to conduct the hearing either remotely or by way of a hybrid hearing. It appeared to me the best way to make sure I could speak to both parties and I was unclear whether the Claimant would prefer to attend by video or in person in the circumstances.
12. My clerk spoke to the Claimant at approximately 08:45. He made it clear to her that he would not be attending the hearing and that he was in fact on his way to work.
13. At my direction and with a view to giving both parties every opportunity to explain the multiple failings in this case to me, I asked my clerk to send a CVP link to both parties making it clear that I would hear from them either in person or by video at 10:00. That email was sent at 09:08. The Claimant did not reply to that email. The Respondent confirmed his attendance by email at 09:51.
14. The hearing began at 10:00 on 16 July 2026. The Claimant did not attend. The Respondent attended remotely. I considered that the Claimant knew about the hearing and had chosen not to attend and, as such, I determined that it was appropriate to proceed in his absence, pursuant to Rule 47 of the Employment Tribunal Rules 2024. I informed the Respondent at the hearing that I intended to strike out the claim and that these reasons would follow.

Discussion of the Problems and Determination

15. At the time the case came before me, the Claimant has failed to comply with the requirements to file witness statements and supporting documents (save for two as discussed below) which he has been directed to file on three occasions (ordered by EJ O'Rourke on 19 November 2025, EJ Dawson on 24 March 2026, and REJ Pirani on 8 July 2026). In my view that is a persistent breach of the Tribunal's orders.
16. Further, despite the hearing before me having been listed on 24 March 2026, the Claimant did not attend despite having advance notice and confirming he was aware of the hearing in emails in advance and by telephone to my clerk on the morning. That is, in my view, a further failure to comply with the orders of the Tribunal. I recognise that the Claimant may have anticipated that the hearing would be adjourned given both parties indicated they would not object to adjournment, but the Tribunal has a duty to manage its time appropriately and proportionately, and parties cannot assume that a hearing will be vacated without the approval of a Judge. I also recognise that the Claimant may be concerned that the Respondent was not attending in person and did not appear to have leave of the Portuguese Government to give evidence. That would have been a matter I would have discussed with the Respondent at the hearing and it may have been I would have proceeded to determine the preliminary issues without any evidence from the Respondent (per paragraph 34 of EJ Dawson's order). However, as the Claimant did not attend, that issue did not fall to be determined.
17. The issue for me at this hearing is that I am faced with a persistent failure to comply with directions and no Claimant to explain the failure or make submissions why his claim should not be struck out. He has had multiple opportunities to explain the failures and to provide relevant documents.
18. I have considered the papers filed in this case carefully. Whilst I can see there has been a good deal of email correspondence and a large amount of case management, this case is now almost 17 months old, has been the subject of two hearings (before the hearing before me), and all I have from the Claimant in terms of evidence to support his case that I can see are:
 - a) A GP printout which confirms the Claimant was diagnosed with anxiety and depression on 10 May 2019 and 18 September 2025 and anxiety disorder on 4 October 2023, but not whether those diagnoses persist or the impact of the same. Further, it contains no mention of dyslexia; and
 - b) A short, unsigned document which the Claimant purports to be an employment contract but which the Respondent purports was a draft only and was never signed or agreed by the parties.
19. Despite the long history of the claim and the Claimant's multiple opportunities, I have nowhere near sufficient documentary evidence to determine even the preliminary issues of putative employer identity and employment status, let alone to start to really understand and engage with the ultimate issues in the claim. In my view, the Claimant has now had sufficient chances to properly prepare and bring his case. He has persistently failed to do so. The Claimant

may have sought to overcome his failure to provide a witness statement or further documentary evidence by seeking to give oral evidence before me. I cannot say if I would have allowed such a request, but he failed to attend the hearing and so could not make such a request. That in my view compounds the failures.

20. I would observe that this case has now had 3 hearings listed. They have taken up 2.5 days of Tribunal listing time. They have resulted in very little, virtually no progress. If I were persuaded to relist and give the Claimant a further opportunity to file evidence and argue the preliminary issue, which I am not, that would mean a further 1 day listing (3.5 days total time at that stage) and then, unless the claim was resolved against the Claimant at such a hearing, a final listing, which would likely be 3-4 days minimum, perhaps more (and so 6.5 - 7.5 days minimum by that stage). That would mean, without even considering the time taken by Judges and staff on the case outside of hearings, the Tribunal would spend longer in hearings considering the case than the claimant actually spent employed by the Respondent (if he was so employed, which has not been determined). That speaks to the proportionality of continuing this case which is a long way from being in a position to proceed.
21. In my view, the Claimant was aware that strike out was an option at this hearing on the basis of his failure to comply with case management orders, and thus he has had a reasonable opportunity to make representations, per Rule 38(2) of the Employment Tribunal Rules 2024. He was aware of the application as made on 14 May 2026, he was warned in the order of EJ O'Rourke and EJ Dawson that failure to comply with orders may result in strike out. He was aware that EJ Gray had listed the application for this hearing. Most recently he was wanted by REJ Pirani on 8 July 2026 that failures could lead to strike out.
22. Whilst I recognise that strike is a relatively rare and draconian step to take, and the need to consider, per Rule 3 of the Employment Tribunal Rules 2024, the overriding objective of acting fairly and justly, in my view it is appropriate to order strike out in the circumstances. I conclude that the grounds for strike out are met as the Claimant has persistently and repeatedly not complied Orders of the Tribunal. The history leaves me with little to no confidence he would in the future.
23. I do not consider a lesser sanction, such as an unless order would be appropriate (per *Weir Valves and Controls (UK) Ltd v Armitage* [2004] ICR 371, EAT) given the number of chances the Claimant has been given and the disproportionate impact of further hearings on the Tribunal lists and the fairness to other users of the Tribunal who have complied with orders and seek to have their cases heard expeditiously (see *Harris v Academies Enterprise Trust* UKEAT/0097/14).

Conclusion

24. The Claimant's claim is therefore struck out in its entirety, and the claim has come to an end.

Case Number: 1400369/2025

Approved by:

Employment Judge David C. Gardner

16 July 2026

JUDGMENT SENT TO THE PARTIES ON
28 July 2026