



EMPLOYMENT TRIBUNALS

Claimant: Minette Wilson

Respondent: Whittington Health NHS Trust

Heard at: Watford Employment Tribunal
On: 25 June & 13 July 2026

Before: Employment Judge Young

Representation

Claimant: Mr Galloway (lay representative)

Respondent: Mr Declan O'Dempsey (Counsel)

REFUSAL OF STRIKE OUT JUDGMENT

1. The Respondent's application to strike out the Claimant's complaint under rule 38(1) (b) is refused.
2. The Claimant's application under rule 38(1)(b) in respect of the Claimant's allegation of witness intimidation by the Respondent is refused.

REASONS

Introduction

1. The Claimant was employed by the Respondent, an NHS trust, as a specialist community public health nurse / school nurse, from 1 April 2019 until 31 March 2022. Early conciliation started on 2 June 2022 and ended on 7 June 2022. The claim form was presented on 1 July 2022.

Hearing and Evidence

2. I heard evidence from the Claimant, Mr Galloway, the Claimant's representative and Ms Jacqueline White on behalf of the Respondent. I

received a strike out bundle from the Respondent, and there was a Claimant's bundle. The Claimant stated that there was a bundle from Mr Galloway as well. However, on reviewing the 2 bundles, they were substantively the same. Mr O'Dempsey raised the issue regarding the rule against self-incrimination. Mr Galloway explained that he had part of a law degree, but he was not legally qualified. The rule against self-incrimination was explained to the Claimant and Mr Galloway. The Claimant and Mr Galloway were given a warning about the right not to self-incriminate.

Applications & Issues

3. The Claimant made an application to strike out the Respondent's ET3. The Claimant's application to strike out the Respondent's ET3 was contained in an email dated 16 December 2024 from the Claimant's representative [76]. In essence, the Claimant argued that the Respondent tampered with her witness (Ms White) and that the Respondent had admitted that they did so. The Claimant also argued that it is "impossible for the Claimant to get a fair trial". The full merits hearing is due to commence on 10 August 2026 for 5 days [69]. The Claimant was asked about how the Employment Tribunal could make a decision on the application when EJ Beadeu and REJ Foxwell's orders in combination meant that to make a decision about the Claimant's application would require the Employment Tribunal to make findings in respect of behaviour that was the basis of the Respondent's and the Claimant's costs applications. Both EJ Beadeu and REJ Foxwell had ordered that those applications be dealt with at the full merits hearing. The Claimant was given an opportunity to provide the circumstances of a material change within the meaning of the EAT decision of Serco v Wells [2016] ICR 768 that meant the order could be revoked and the decision made on the application. The Claimant gave no reasons at all. In the circumstances, the Employment Tribunal declined to deal with the Claimant's application made on the basis of the Respondent's conduct that led to a postponement application in October 2024.
4. The Respondent also made an application to strike out the Claimant's claim form on 18 December 2024 [78-82] under rule 37(1)(b) Employment Tribunal Procedure Rules 2024.

Findings of Fact

5. The findings of fact in this matter are made on a balance of probabilities. Only findings of fact relevant to the issues and those necessary for the Tribunal to determine have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. References to the agreed strike out bundle are in square brackets. References to the Claimant's bundle are in square brackets, and the page number is preceded with the initials "CB".
6. The Claimant and Ms White knew each other through work. The Claimant and Ms White had a friendship outside of work and would WhatsApp each other on occasion [CB11]. The Claimant presented her claim to the Employment Tribunal on 1 July 2022 [3] and on 6 December 2022, Ms White wrote to the Claimant via WhatsApp to tell her that she was leaving the department where they both had worked to work elsewhere in Adult Social

Services for the Respondent. Ms White ended her WhatsApp message with “will catch up” [CB11].

7. The Claimant responded the same day to make arrangements to meet up with Ms White. Arrangements were made for the Claimant and Ms White to meet on 17 December 2022. Ms White gave evidence that she did not know why they were meeting but only that the Claimant told her that she had something to share. This evidence was not challenged by the Claimant, and I accept Ms White’s evidence on this.
8. Ms White’s first meeting with the Claimant on 17 December 2022 was at a Costa Coffee [CB12]. The Claimant’s evidence was that it was at this meeting that Ms White agreed to give evidence to support the Claimant’s case. The Claimant was unable to point to any written documentation confirming this but said that Ms White agreed verbally. When challenged as to what Ms White agreed to, the Claimant said that Ms White agreed to support the Claimant’s case and said No worries, you can (in respect of providing a statement).
9. Following that meeting in December 2022, the Claimant and Ms White met up again on 25 November 2023, this time at the Nando’s in Wood Green. Mr Galloway gave evidence that he knew that the Claimant met with Ms White because he drove the Claimant to the meeting at Nando’s, although he did not attend the Nando’s or meet or see Ms White. There was no dispute that Ms White and the Claimant met approximately 11 months after their first meeting.
10. The Claimant’s evidence was that on asking Ms White to agree to provide the witness statement, the Claimant said that she drafted the witness statement based upon notes that she took the previous year in December 2022 at the Costa Coffee. She said that Ms White knew she was writing notes at the meeting in December 2022. The Claimant said that she typed up the statement before their second meeting on 25 November 2023 and showed the statement to Ms White at that meeting at Nando’s. The Claimant said that she showed Ms White the statement on her phone and Ms White said that she was happy with the statement and that is why the Claimant was able to send it to the Respondent’s solicitor. However, the Claimant was unable to remember what phone she used which had the witness statement on it and said that she wrote the statement using Word on her phone and that she had not sent it to herself. Furthermore, when the Claimant was asked about whether she wrote Mr Galloway’s statement (which was also submitted as part of the Claimant’s case), the Claimant said that she would not do that as it would mean that she was influencing Mr Galloway and that she would not therefore write it.
11. The Claimant stated that she received Mr Galloway’s statement by email. When the Claimant was asked why it was ok to write Ms White’s witness statement but it was not ok to write Mr Galloway’s witness statement, the Claimant changed her evidence and said that she did actually write Mr Galloway’s statement with him and that she didn’t influence his statement or Ms White’s.
12. The Employment Tribunal finds the Claimant’s evidence of events without credence. The Claimant mentions nothing of how Ms White’s witness

statement came about; in her witness statement, she did not produce any handwritten notes of the Costa Coffee meeting nor any draft statement written at the time or any time before meeting Ms White for the second time. The Employment Tribunal is unaware of a phone that would allow you to write a statement on it using Word on the phone. There is not a single piece of documentary evidence before the Employment Tribunal to verify anything that the Claimant stated, and it is inconceivable that there would not be any written evidence if indeed the Claimant's version of events were truthful. The Claimant's evidence on why she wrote Ms White's statement for her as she did is contradictory and wholly inconsistent. I do not accept any of the Claimant's evidence on this point.

13. The Claimant admitted that she never sent Ms White the statement herself but said that her plan was that when Ms White attended the Employment Tribunal hearing she would receive a copy then and sign it there. The Claimant asserted that the initials of the JW were not Ms White's signature. However, it is worth noting that Ms White did not attend the full merits hearing at the end of October 2024 at all.
14. However, Ms White's evidence was that at the meetings in December 2022 and nearly a year later in November 2023 (she was unable to distinguish which one) the Claimant told her her story. Ms White said that the Claimant said that she had left work, she shared that she had been unfairly treated and that she had made an application to return to work. Ms White said that the Claimant was upset and that the Claimant asked her if she would write a statement. Ms White was emphatic that she did not agree to do that and told the Claimant that she would not write a statement for her, and I accept Ms White's evidence on this point.
15. Ms White's evidence was that she found out about the witness statement because she had been friendly with Jurga Bartkeviciene when she worked as an Immunisation Lead for the Respondent. Jurga Bartkeviciene was the Claimant's manager at one point and was one of the main antagonists in the Claimant's claim. Ms White left the role of immunisation lead to become a business administrator in 2022 but had not heard from Jurga for some time, and so she reached out. When she made contact with Jurga, she was told by Jurga Bartkeviciene that Ms White had written a statement in respect of the Claimant's case. Ms White stated that this was a surprise to her. I accept Ms White's evidence on this point. Although the Claimant stated in evidence that she believed there to be a conspiracy as to how Ms White was in contact with the Respondent about her witness statement, the Claimant was only saying she believed, not that she knew, there was a conspiracy and there was no other evidence to contradict Ms White's evidence on how she came to know about the witness statement purported to be by her. In fact, the emails on pages [85-86] where the Respondent writes to Ms White about her request for a copy of her witness statement support Ms White's version of events, and I found Ms White to be a straightforward and honest witness whose evidence was consistent with the documentation.
16. After the conversation with Jurga Bartkeviciene, Ms White requested a copy of the witness statement from the Respondent [85-86]. Ms White added that she was never told the date of the Employment Tribunal by the Claimant on the second occasion she met with the Claimant, by which time the Claimant

would have known the Employment Tribunal hearing date [60].

17. I find that Ms White contacted Jurga first and then the Respondent in order to obtain a copy of the witness statement that she was supposed to have agreed to and provided on behalf of the Claimant as she was aggrieved about her name being used in support of the Claimant via a witness statement she did not write. After receiving the statement, Ms White WhatsApp messaged the Claimant on 19 November 2023 to say *"I trust that you are well. Just getting in touch because I understand that my name was used and a statement. I did not give any statement. I explained that I would not be able to do that because I work for Can you please explain why my name was used without my knowledge."* This WhatsApp was immediately followed by another WhatsApp clarifying the earlier WhatsApp *"Work for the trust"* 19/11/2024, 16:14. The Claimant's response was "19/11/2024, 16:30 - 226: Hi Jackie. I don't know what you are talking about.. Is there something you know that I don't know. Please tell me" [374]
18. Ms White responded on 19/11/2024, 17:13 *"Minette, do you know anything about a statement used in court which supposedly came from me saying that Jurga was abusive to me. This is a lie anyway. Have you provided a false statement using my name. This is quite serious if you have done this."*
19. The Claimant's response at 19/11/2024, 17:54 was *"I just don't know what you are talking about Jackie."* [374]
20. I find that the Claimant's WhatsApp responses to Ms White's queries about the statement indicate that the Claimant was being dishonest. If the Claimant had obtained consent from Ms White for the witness statement, she would have responded to say so instead of saying that she knew nothing of what Ms White was writing about. The Claimant's explanation for her response was that she was at work when the message came through and so she wrote the response in haste without paying attention. However, she admitted in evidence that her hours of work were 09:00-17:00 and she responded after 17:00 (stating she knew nothing of what Ms White was referring to), which meant that she was not at work. Furthermore, the Employment Tribunal finds that the Claimant was under no pressure to respond to the text and did not respond immediately and therefore does not accept the Claimant's explanation. I find on a balance of probabilities that the Claimant's responses to Ms White's WhatsApps indicate that the Claimant was stalling in order to work out how Ms White had found out about the witness statement.
21. I find that Ms White did not write, nor did she agree to provide, a witness statement for the Claimant. I find that the witness statement at page 88 is a complete fabrication. It was neither the words nor the sentiment of Ms White. The statement is dated 20 December 2023, and as the Claimant did not send Ms White the statement, there was no reason to date the statement at all. I find that the Claimant put the date and initials of Ms White on the statement to suggest authenticity, of which the statement had none. It was also to indicate that Ms White had agreed the statement, which she hadn't. I find that the Claimant did not tell Ms White of the dates of the Employment Tribunal hearing because she did not want Ms White to attend because she knew that Ms White had not agreed to give evidence. I find the Claimant's evidence that she decided not to call Ms White to give evidence at the

October 2024 full merits hearing as Ms White had personal issues and she did not want to trouble Ms White to be simply untruthful. There was no evidence before me of any such exchange between the Claimant and Ms White around the time of the Employment Tribunal hearing in October 2024, and it is wholly inconsistent with the Claimant's submission that Ms White's evidence was important and determinative.

22. On 6 April 2024, there was a case management preliminary hearing before EJ Postle at which the dates for the full merits hearing were listed for 28 October to 1 November 2024 [60]. Paragraph 5 of EJ Postle's order in respect of that case management preliminary hearing sent on 6 June 2023 provided that the parties exchange witness statements on 22 September 2023 [62]. By letter dated 6 November 2023, EJ Hyams directed that the parties exchange witness statements on 22 December 2023. On 20 December 2023, Mr Galloway sent the Respondent's solicitors an email attaching the Claimant's witness statements [126]. That email also attached the witness statement of Ms White [88] which contained a statement of truth and the witness's initials JW and the date 20 December 2023. By email dated 21 December 2023, the Respondent's solicitors told the Employment Tribunal that it had received the Claimant's witness statements, but that those statements had not been opened and would not be opened at that stage [125].
23. The final hearing was due to take place between 28 October- 1 November 2024, but the hearing was postponed due to the Claimant's assertions that she did not receive the Respondent's witness statements until the day of the final hearing and on the basis that she allegedly received an incomplete hearing bundle of documents. The final hearing has been relisted to take place between 10 – 14 August 2026. I make no findings in respect of the Claimant's assertions.
24. The Claimant's evidence was Ms White's WhatsApp message of "6/12/2024, 14:25 *"I will turn up to the trial alright."* [CB22] indicated that Ms White was going to attend the Employment Tribunal to support her. I find that this is a complete twisting of the WhatsApp message. The context of the WhatsApp message is that it is made within the argument about Ms White complaining that she did not agree to provide a witness statement. It is followed up by Ms White stating *"You said it yourself. The truth always comes out in the end. You bet. I now know what you are and the rest is certainly coming out"* [374]. I find that this is clear hostility from Ms White and does not indicate support in any way. I find that the Claimant did this to mislead the Employment Tribunal in respect of her response to the Respondent's application.

The Law

25. Rule 38 of the Employment Tribunal Procedure Rules 2024 (ETPR) provides for the grounds on which a claim form or response form may be struck out. The relevant parts of Rule 38(1) state:

*"—(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—
[...]"*

(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;"

26. The Court of Appeal decision of Blockbuster v James [2006] IRLR 630 is the seminal case on how an Employment Tribunal must treat rule 38(1)(b). Sedley LJ states at paragraph 5:

"This power, [of strike out] as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either 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. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response. The principles are more fully spelt out in the decisions of this court in Arrow Nominees v Blackledge [2000] 2 BCLC 167 and of the EAT in De Keyser v Wilson [2001] IRLR 324, Bolch v Chipman [2004] IRLR 140 and Weir Valves v Armitage [2004] ICR 371, but they do not require elaboration here since they are not disputed. It will, however, be necessary to return to the question of proportionality before parting with this appeal."

27. In the Court of Appeal decision of Abegaze v Shrewsbury College of Arts & Technology [2010] IRLR 236 at [15] Elias LJ sums up the aspects of the test to be applied in respect of a strike out application under rule 38(1)(b). Elias LJ states :

"In the case of a strike out application brought under [r 38(1)(b)] it is well established that before a claim can be struck out, it is necessary to establish that the conduct complained of was scandalous, unreasonable or vexatious conduct in the proceedings; that the result of that conduct was that there could not be a fair trial; and that the imposition of the strike out sanction was proportionate. If some lesser sanction is appropriate and consistent with a fair trial, then the strike out should not be employed."

28. The EAT decision of Bayley v Whitbread Hotel Co Ltd t/a Marriott Worsley Park Hotel and anor EAT 0046/07 provides by way of example the primacy of whether a fair trial is still possible when dealing with facts where the party subject to the strike out application deliberately misleads the Employment Tribunal. Even the concealment of sections in an expert report on dyslexia about the Claimant's dyslexia by the Claimant's father, who was representing him, was not enough for the EAT to agree with the ET decision that the deliberate act of misleading the Employment Tribunal was a proportionate sanction. The EAT considered that a fair trial was still possible in that case, where the material concealed was not determinative of the issue that the Employment Tribunal had decided of disability, and the Respondent had received the concealed information before the Employment Tribunal had to decide the issue of reasonable adjustments at trial.

29. In One Utilities Ltd v Hatfield 2009 IRLR 45, EAT, the EAT disregarded the notion that, when determining whether a strike out is a proportionate response, tribunals should carry out a 'balancing act'. They re-emphasised

that the critical question is whether a fair trial remains possible.

Analysis and Conclusions

30. I received written submissions from both parties and heard oral submissions, which I took into account when making my decision on both applications.
31. Dealing first with the Claimant's application for a strike out. The Claimant was unable to provide any explanation or reason for a material change in circumstances that would necessitate that, in the interests of justice, the Employment Tribunal consider the application to strike out based upon the Respondent's alleged conduct in relation to the delay of the provision of their witness statements and alleged failure to provide a completed bundle resulting in a postponement of the trial in September 2024. REJ Foxwell ordered that the Claimant's application for costs in respect of the Respondent's behaviour which allegedly resulted in a postponement be dealt with at trial [71].
32. To deal with that application, I conclude, would result in the Employment Tribunal making findings about the Respondent's conduct. This is further supported by EJ Bedeau's order [69] clearly states *"The issue of whether the claimant should pay the respondent's costs incurred as a consequence of the hearing being postponed because she asserts that she did not receive the witness statements until today and an incomplete bundle of documents on 27 September 2024, will be heard and determined by the full Tribunal at the final hearing."*
33. The Claimant's position is that her conduct is as a result of the Respondent's conduct. I therefore conclude that there are no material changes in circumstances that mean that, having regard to Serco v Wells, it is necessary in the interests of justice that I deal with the issue of the Respondent's conduct whether under rule 38(1) (b) ETRP or not. In those circumstances, I dealt with the Claimant's application to strike out the Respondent's response only in relation to the grounds of witness intimidation.
34. In respect of the application made on the grounds of witness intimidation, the Claimant accepted in submissions that it was possible that Ms White spoke to the Respondent before the Respondent spoke to her about her giving evidence for the Claimant. I found that Ms White did indeed speak to the Respondent first, asking for a copy of the witness statement that she was supposed to have agreed to and provided on behalf of the Claimant. There is no property in a witness and, in any event, contrary to Mr Galloway's submission, there was never any problem with the Claimant's witness (by choice) discussing their evidence with the Respondent before giving evidence. The obvious question would be why would they want to.
35. In this case, I found that it was because Ms White was aggrieved at finding out that the Claimant had submitted a fabricated witness statement on her behalf when she had categorically told the Claimant that she did not wish to give evidence for her. In those circumstances, there was no witness intimidation as the Claimant put it; Ms White chose to contact the Respondent and speak with them about the circumstances surrounding the

existence of the witness statement with her name on it, and it was as simple as that. I therefore conclude that there has been no witness intimidation and therefore no unreasonable conduct by the Respondent. The Claimant's application does not reach the threshold of scandalous, vexatious or unreasonable conduct and so the application fails.

36. Dealing next with the Respondent's application. I found that at no time did Ms White agree to provide the Claimant with a witness statement. I found that Ms White categorically told the Claimant that she would not be a witness for her. At no time did Ms White see the witness statement with her name on it before it was sent to her by the Respondent. I found that the content of the statement was a fabrication. It was neither the words nor the sentiment of Ms White. The Claimant accepted in submissions that the witness statement was important and determinative of the Claimant's claim for constructive dismissal and race discrimination. Whilst I accept that the witness statement does speak about matters that appear to concern the Claimant's constructive dismissal, this Employment Tribunal does not conclude that the witness statement on the face of it makes any reference to race discrimination. However, the Claimant's position is that the witness statement shows that the same people were involved with Ms White as the Claimant, namely Jurga Bartkeviciene. The Claimant asserts and continues to assert that Ms White consented to the provision of the statement and had not withdrawn that statement, nor has she indicated that she intends to withdraw the statement or not rely on it.
37. However, it is worth noting that Ms White will not be attending the trial listed for August on behalf of the Claimant to speak to that witness statement and, so the value that the Employment Tribunal will be able to assign to such a contested witness statement, regardless of its content, is unlikely to be significant. I found the Claimant's evidence not to be credible, to say the least, and considered that the Claimant was not telling the truth when she said that Ms White agreed to the statement and that she discussed the content of the statement with Ms White during her meeting with her. Furthermore, the Claimant presented her text messages (in particular the one on 6 December 2024) without providing the context; I already found that the Claimant did this to mislead the Employment Tribunal in respect of her response to the Respondent's application.
38. The threshold in respect of unreasonable conduct has been reached. The Claimant's conduct is wholly unreasonable and is egregious behaviour of the most serious order, supported by the fact that the Claimant maintains to this day that Ms White agreed to the witness statement. With no rational explanation whatsoever as to why Ms White would attend the Employment Tribunal to swear under oath that she did not consent, if she did indeed consent.
39. The Claimant's submissions were that both the Respondent and Ms White are corrupt without a shred of evidence of such corruptness. The Claimant's behaviour is a clear abuse of process that continues to this day as the Claimant asserts the determinative nature of Ms White's evidence for her case. Notwithstanding, in exercising my discretion I do not strike out the Claimant's case.
40. My powers of strike out are not for the purposes of punishment. I consider

that a fair trial can still proceed, not least because Ms White has disavowed the statement and I have made a finding to that effect; secondly, contrary to what the Claimant says, I cannot see the witness statement's significance in relation to the Claimant's race discrimination complaint, and so the witness statement does not have the cogency that the Claimant alleges that it does.

41. The Claimant's egregious behaviour can be considered by the Employment Tribunal in respect of multiple matters, i.e. credibility and any costs applications. The Respondent can deal with the matter in cross examination of the Claimant. A fair trial can still take place and whilst I have sympathy with the Respondent's submission that this case is an exception as expounded by Lord Justice Sedley in Blockbuster v James at paragraph 21, Lord Sedley does not explicitly say that the exception to the rule of whether the Employment Tribunal must consider whether it is possible for a fair hearing to take place means that part of the test to strike out is not considered at all. Sedley LJ appears to be saying that previous behaviour that has not reached the threshold historically will only exceptionally reach the threshold requiring the claim or response to be struck out. I do not accept the Respondent's argument that the Claimant's persistent breach of the Employment Tribunal's rules of procedure means that the Employment Tribunal can and must infer that the Claimant will continue to break the rules. Whilst I consider that the Claimant is in persistent breach in respect of the abuse of process as she has not resiled at any point from her position and has, as summed up by Mr O'Dempsey, "doubled down". I consider that if this was the case, the Respondent would have provided other examples of the Claimant's breach of the rules historically supporting this thesis; they do not do so. This is not a case where the Claimant contumeliously breaks the rules on repeat as presented to me. The contumeliousness is present, just not the repeat. I can make no such inference that the Claimant will continue to do this in respect of the trial. Mr O'Dempsey accepted in submissions that there would be no point in making an unless order as an alternative. I agree that there would be nothing it could achieve in rectifying the Claimant's behaviour. It is for those reasons that I refuse the Respondent's application.

Approved by:

Employment Judge Young

Dated 29 July 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
29 July 2026

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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