

Case Number: 6018467/2024



EMPLOYMENT TRIBUNALS

Mr. A Hartley

V

eBay (UK) Limited

Claimant

Respondent

Heard at: Watford Employment Tribunal-
heard remotely by CVP

On: 30 June 2026

Before: Employment Judge Daley

Appearances:

For the claimant: In person

For the respondents: Ms. Grace Nicholls - Counsel

WRITTEN REASONS

On a Preliminary Hearing

JUDGMENT

(i) The claim of Race Discrimination, Disability discrimination, Sex Discrimination and Breach of Contract is struck out pursuant to the Employment Tribunal Rules of Procedure 2024 rule (1) (a) because it has no reasonable prospect of success.

REASONS

The claim

1. The claimant was employed by the respondent, an online marketplace platform for users to buy and sell items. As a Logistics Operative on 15 April 2023 until 7 June 2023.
2. His claim was that during his employment he was subjected to the following behaviour alleged harassment due to race/ religious and disability, together with discrimination caused by a provision, criterion or practice.
3. The Respondent denies discrimination and further stated that-: *the alleged events set out in the Claimant's form ET1 occurred more than three months before the Tribunal received the Claimant's claim. Further, the Respondent contends that the allegations set out in the Claimant's ET1 do not amount to conduct extending over a period within the meaning of section 123(3)(a) EA 2010. The Respondent therefore submits that it would not be just and equitable for the Tribunal to extend time for submission of the Claimant's discrimination claims.*

The procedural history

4. The claimant applied for ACAS early conciliation on 19 August 2024; the early conciliation period ended on 30.09.24 and a certificate was granted.
5. The claimant issued her ET 1 on 13 November 2024. A Notice of Claim, from the Tribunal, ordered that the respondent submit a response.
6. The respondent filed an Amended Grounds of Resistance on 2 April 2026.
7. A case management hearing was held before Employment Judge Skehan, on 9 February 2026, where directions were given for the Preliminary Hearing on 30 June 2026.
8. On 9 February 2026 at the preliminary hearing, the judge gave the following directions-: *"The respondent must by 2 May 2026 set out the basis for its application for a strike out order or in the alternative a deposit order, in writing and send it to the claimant. 8. The claimant must set out his response to that application in writing by 16 May 2026 and send it to the respondent. 9. The parties must liaise and agree the content of an appropriate bundle for the preliminary hearing by 16 May 2026. The respondent has primary responsibility for completing this bundle and it must be sent to the employment tribunal by 23 May 2026; the matter was set down for a further preliminary hearing following an application from the respondent dated 1 May 2026.*
9. In their application the respondent set out as follows-: *The Respondent submits that the Claim should be struck out in accordance with rule 38 of the Employment Tribunal Procedure Rules 2024 (the "Rules"). The Respondent submits that such an order would be appropriate on one or all of the following grounds: the Claim has no reasonable prospects of success as it is out of time, such that the Claim should be struck out in accordance with rule 38(1)(a); the Claimant's conduct in the proceedings has been unreasonable, such that the Claim should be struck out in accordance with*

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rule 38(1)(b); and/or the Claimant has failed to comply with the orders of the Tribunal, such that the Claim should be struck out in accordance with rule 38(1)(c)."

10. These written reasons follow the claimant's request for written reasons following the hearing and the case management order dated 30.10.2025.

The Hearing

Attendance

11. The hearing was held at the Watford Employment Tribunal and was attended by the parties by video-link. The claimant represented himself. The respondent was represented by Ms. Grace Nicholls.

The Evidence

12. The Tribunal was provided with a bundle of 217 pages. The Tribunal heard from the claimant and the respondent who represented himself.

The respondent's application

13. At the hearing Ms. Nicholls submitted that the claimant had worked for eBay and had resigned on 4 June 2024, and that his resignation was processed on 7 June 2024. She referred the Tribunal to the list of issues which set out the details of the discriminatory conduct which was alleged. Ms. Nicholls set out that given the date the claim form was presented, and the dates of early conciliation, any complaint about something that happened before 2 July 2024 may not have been brought within time. She submitted that the claim was not brought until 13 November 2024, and that as the ACAS certificate was issued on 30 September 2024, the last date upon which the claimant could bring an on-time claim was 29 October 2024, given this the claim was out of time by 14 days. She submitted that the claimant had no reasonable prospects of establishing that it was just and equitable for the time to be extended.
14. Ms. Nicholls set out that the respondent did not accept discrimination or that there had been a continuing course of conduct. She submitted that if the tribunal did not agree with her concerning her primary contention, that the claim had no reasonable prospects of success, then the Tribunal should make a deposit order for each of the separate allegations being pursued.
15. Ms. Nicholls further submitted that the Claimant's conduct in the proceedings has been unreasonable, such that the claim should be struck out. She referred to correspondence which she relied upon in support of her submissions that the claimant failed to comply with tribunal orders and failed to cooperate with the respondent in producing the list of issues. She further set out that the claimant had acted unreasonably and vexatiously in introducing new allegations within the list of issues which were not within his original claim. An example of this was his introducing new allegations of whistleblowing and disability discrimination which were not within

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- the ET1. Ms. Nicolls submitted that these were allegations which would have been known to the claimant at the time that he issues his claim.
16. She further submitted that despite the respondent complying with disclosure, and only redacting sensitive and personal information, the claimant made an unnecessary application for specific disclosure.
 17. Within the respondent's application, the respondent set out that the claimant had persistently used Artificial Intelligence in his correspondence which was causing difficulties for the respondent, it was submitted that-: *"Claimant's use of AI: the Respondent believes that the Claimant is using artificial intelligence to prepare his communications to the Respondent and the Tribunal. This is leading to an increase in expense for the Respondent and the Tribunal who are having to deal with multiple communications from the Claimant. The Respondent submits that the Claimant's use of AI is inhibiting co-operation between the parties, which is not in line with the overriding objective."*
 18. Ms. Nicholls told the Tribunal that multiple and very lengthy communications from the claimant were preventing the parties working cooperatively together. She referred to the use of terminology in the letters which required the respondent to seek further clarification, such as the use of the term "Corporate Mobbing" This meant that the claimant was expressing his letters using phrases and terminology which needed further clarification before the issues could be addressed.
 19. Ms Nicholls referred the Tribunal to the following cases as part of her submissions *Emuemukoro v Croma Vigilant [2022] ICR 327 and Blockbuster Entertainment Limited v James [2006] IRLR 630.*

The claimant's response

20. In reply the claimant set out that in respect of whether it was just and equitable to extend time, the claim had been with ACAS. He stated that following his resignation, he was going through different issues and that he was partially disabled and had been homeless. He was asked about his period of homelessness, and explained that he had been homeless from December 2024, until the present time.
21. He said that he believed that time had been wasted during the ACAS period by one of the ACAS workers who he stated persuaded him not to bring a claim.
22. He told the Tribunal that he suffered with anxiety and racial trauma due to the actions of the respondent and this had hampered him. He had not understood the rules relating to the time limits for bringing claims.
23. Regarding his failure to comply with the dates within the Tribunal Order, he stated that this was due to his disability, homelessness and racial trauma.
24. In reply to the claimant's submissions, Ms Nicolls submitted that the claimant had been able to bring a claim and respond to correspondence and attend to other matters, such as bringing new allegations, given this, she submitted that this did not provide an explanation for his late claim. Ms Nicholls invited the Tribunal to consider the documents within the bundle.

The Law

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25. The Employment Tribunal Procedure Rules 2024

26. **Rule 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—(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).*

The Tribunal's decision

27. In looking at the grounds advanced by the respondent to strike out the claimant's claim. The Tribunal considered the second and third ground together; that is whether the claim ought to be struck out due to the unreasonable conduct of the claimant 38(1) and (b) and that he has failed to comply with orders of the Tribunal rule 38 (1) (b).

28. In considering the application, the Tribunal considered the cases of *Technology and Emuemukoro v Croma Vigilant*, and *Blockbuster Entertainment Limited v James* 2006,

29. In *Technology and Emuemukoro v Croma Vigilant* 2022 ICR 327 it was stated that that “the requirement for exercising the power to strike out all or part of a claim or response under rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013, on the ground of unreasonable conduct of the proceedings, was either that the unreasonable conduct had taken the form of a deliberate and persistent disregard of required procedural steps or that it had made a fair trial impossible; that, where the application to strike out was considered at the outset of the trial and the party's unreasonable conduct had resulted in a fair trial not being possible within that trial window, the power to strike out was triggered; that whether the power should then be exercised depended on whether it would be proportionate to do so, taking account of all factors relevant to a fair trial, such as the undue expenditure of time and money, the demands of other litigants and the finite resources of the court; and that, having found that a fair trial was not possible within the hearing window and that an adjournment would have entailed unacceptable prejudice to the claimant, the tribunal had been entitled to conclude that there was no other option than to strike out the response.”

30. In the *Blockbuster* case, it was recognised that striking out a claim was a draconian measure which was only appropriate in exceptional circumstances.

31. In his response, the claimant referred to the circumstances that he was experiencing following the issuing his claim which had an impact on the way in which the litigation was conducted. He had submitted that striking out his claim would have the effect of stifling a potentially meritorious claim.

32. The Tribunal in reaching its decision born in mind that the litigant was a litigant in person, and that although he had not complied with important rules of litigation in terms of the manner in which he conducted his case, the Tribunal had to consider the extent of his breath, and whether it had reached the threshold of conduct which

- was scandalous and vexatious. The Tribunal determined that he had not acted in a manner which was scandalous and vexatious although he had not complied within the time limits, he had made efforts to comply which resulted in his complying days later, however the respondent had not advanced details of how this failure had impacted upon them. Given this, the Tribunal decided that the claim ought not to be struck out under rule 38 (1) (a) (the first part) or 38 (1) (b).
33. The Tribunal then considered whether it could be said that there was no reasonable prospects of the claim succeeding, and whether in respect of the time limits issue, it should allow this issue to be decided by the Tribunal hearing the full merits of the claim.
34. This Tribunal was mindful that it had not heard specific evidence from the claimant under cross examination. However, its role was to determine whether his case had no reasonable prospects of success. In this regard, the Tribunal had to weigh up the fact that the claimant's claim was out of time, and that the only way in which he was likely to succeed was if he could satisfy the Tribunal at a full merits hearing that it is just and equitable to extend time.
35. In this regard, the Tribunal considered the claimant's reference to his medical and social circumstances as the reason why his claim was filed late. He referred to medical information within the bundle.
36. The Tribunal, whilst having regard to this, noted that the claimant initiated the claim by applying to ACAS within the time limit. The claimant received a certificate from ACAS on 30 September 2024. The claimant in his response did not provide any details as to why he was unable to comply during the period between the certificate being issued and the expiry of the time limit. The Tribunal considered that this would be relevant to the issue of whether it would, in all the circumstances, be considered just and equitable to extend his claim.
37. The Tribunal in making its decision was not wholly satisfied that it would be considered just and equitable to extend time, nevertheless. The Tribunal was aware that whilst it was not the decision maker hearing the evidence, its role in this application was to make an assessment of whether in all the circumstances the claim had *or has no reasonable prospect of success*.
38. In making its decision, the Tribunal bore in mind that the claimant was able to initiate his claim within the time limit, and his circumstances in becoming homeless did not occur until December 2024. This meant that this was not the primary reason which would be relied upon by the claimant in seeking an extension of time.
39. The Tribunal noted that the claimant had the capacity to initiate litigation, and to seek advice concerning the relevant time limits. Although he stated that ACAS had caused delays to his claim, the time-limit was effectively suspended during the ACAS period, and the claimant had 28 days after to issue his claim.
40. Given this, the Tribunal is not persuaded that the claimant would be able to satisfy a tribunal considering the merits of his claim that it is just and equitable to extend time.
41. Accordingly, the Tribunal decided to strike out the claimant's claim on the grounds that the claimant has no reasonable prospects of success.

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Approved by:

Employment Judge Daley

Date: 10 September 2026

Sent to the parties on:

23 September 2026

For Secretary of the Tribunals