



EMPLOYMENT TRIBUNALS

Claimant: Edyta Osko
Respondent: Pizza Express
Heard at: London East Hearing Centre (by CVP)
On: 30 July 2026
Before: Employment Judge Bann

REPRESENTATION:

For the Claimant: did not attend
For the Respondent: Ms Anjali Parekh (paralegal)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

Strike out of claim

1. The claims of unfair dismissal under section 98 and automatic unfair dismissal under section 103A of the Employment Rights Act 1996 are struck out under Employment Tribunal Rule 38(1)(a) because they have no reasonable prospect of success.
2. The claim of a failure to make reasonable adjustments under sections 20-21 Equality Act 2010 is struck out under Employment Tribunal Rule 38(1)(d) because the Claimant has not actively pursued this claim.

REASONS

Summary of facts:

1. The claimant was employed by the respondent, a family friendly national chain of pizza restaurants from 30 September 2021 to 4 June 2025. At the time of her dismissal, she was a Deputy Manager when she was summarily dismissed for Gross Misconduct for engaging in sexual activity with a junior colleague in the manager's office and personal misuse and approving others to misuse the service charge for financial gain.
2. The Respondent conducted an ACAS compliant disciplinary process in:
 - a. Conducting an investigation during which the Claimant had a right to comment on the allegations and the evidence in two meetings on 9 April and 2 May 2025. The Claimant admitted sexual activity in the workplace on one occasion.
 - b. The Claimant attended a disciplinary hearing held on 22 May 2025. She was notified in writing of the decision to summarily dismiss on 4 June 2025.
 - c. The Claimant was notified of her right of appeal. The Claimant appealed on 6 June 2025. An appeal hearing took place on 23 July 2025. The decision to reject the appeal was sent in writing on 31 July 2025.
3. Early conciliation started on 5 June 2025 and ended on 11 June 2025. The claim form was presented on 25 August 2025.
4. The ET1 the Claimant ticked the box for unfair dismissal only. In section 8.2 she states however, '*my depression, possibly a disability under the Equality Act 2010 warranted adjustments but none were offered*'. She further states; '*if my dismissal was tied to my GDPR complaints, it's automatically unfair*'.
5. The Tribunal believes the GDPR complaint relates to the grievance submitted on or around 22 May 2025, where the Claimant raised concerns about how the CCTV footage of her sexual activity was acquired and shared. She stated it breached her rights under GDPR.
6. In the response served on 29 September 2025, the Respondent responded only to the unfair dismissal claim. They noted the claims in respect of breach of GDPR and disability discrimination but do not give a response to those allegations.
7. The Tribunal initially assessed this case as an ordinary unfair dismissal claim and issues a notice of hearing on 1 September 2025 for a 2-day hearing 4-5 February 2026.

8. The Respondent made a strike out application under rule 38(1)(a) Employment Tribunal Procedure Rules 2024 on 6 October 2025. There does not appear to be any response to that application sent by or on behalf of the Claimant.
9. The application to strike out was considered by REJ Burgher who postponed the final hearing and listed a Preliminary Hearing in public to consider the application. By letter of 2 March 2026, the parties were notified that the Public Preliminary Hearing had been listed to consider the Respondent's application for strike out or deposit order. The parties were directed to exchange written arguments 14 days before the Public Preliminary Hearing. The hearing was originally listed on 14 May 2026 but postponed due to lack of judicial resources and relisted for today, 30 July 2026. That notice of hearing was sent to the parties by email.
10. The Respondent was represented at the hearing. The Claimant did not attend the hearing. Attempts were made to contact her by telephone and email. We delayed the start of the hearing by 20 minutes to wait for her attendance.
11. Under rule 47 Employment Tribunal Rules of Procedure 2024 (ET Rules), *"If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."*
12. The tribunal was satisfied that enquiries were made to find the reasons for the Claimant's non- attendance. In addition, the Tribunal took note of rule 38(2) ET Rules, which state that a claim may not be struck out unless the claimant has been given a reasonable opportunity to make representations, either in writing or at a hearing. The Judge was satisfied that the Claimant was given an opportunity to make representations in person at the hearing today. She was also directed to make written arguments and did not so do.
13. The Tribunal proceeded with the hearing in the absence of the claimant.
14. The Respondent relied on a bundle of 200 pages and two CCTV extracts. The Respondent relied on written submissions submitted and made further oral submissions.

The Law

• Rule 38 Employment Tribunal Procedure Rules 2024

- (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;
 - (d) that it has not been actively pursued;

Relevant case law

- The discretion to strike out is a draconian power which should not be exercised lightly **[Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684]**
- The power to strike out should only be exercised after a careful consideration of all the available material, including the evidence put forward by the parties and the documentation on the employment tribunal's file. No reasonable prospect of success does not mean the claimant's claim is likely to fail, or it is possible the claim will fail, and it is not a test that can be determined by considering whether the other party's version of disputed events is more likely to be believed. It is a high test: there must be *no* reasonable prospects of success. **[Balls v Downham Market High School & College UKEAT/0343/10]**
- The EAT Guidance on strike out applications with litigants in person (LIP)
 - LIPs should not be expected to explain their case and take the judge to relevant materials, rather the onus is on the judge to consider the pleadings and other core documents that explain the case.
 - The tribunal must take reasonable steps to identify the claims and issues; it is not possible to decide whether a claim has reasonable prospects of success if the tribunal does not know what the claim is.
 - Legally represented respondents are required to assist the tribunal in identifying documents which set the claim out and claimants should attempt to explain their claims clearly and focus on core claims rather than trying to argue every conceivable point.

[Cox v Adecco and others EAT/0339/19]

Discrimination claims

- Strike out of discrimination claims should only be considered in the clearest of cases. **[Anyanwu & Another v South Bank University and South Bank Student Union [2001] ICR 391]**
- Court of appeal guidance **[Mechkarov v Citibank N.A [2016] ICR 1121]**
 - Only in the clearest case should a discrimination claim be struck out;
 - Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;
 - The Claimant's case must ordinarily be taken at its highest;
 - If the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and
 - A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.

Reasons

1. Assessing the case at its highest, the Claimant has highlighted three claims in section 8.2 of the claim form:
 - Unfair dismissal

- Automatic unfair dismissal for making a protected disclosure under section 103A ERA1996.
- Failure to make reasonable adjustments with depression being the named disability.

2. Unfair dismissal under s98 ERA 1996

- a) The tribunal found that the reason for dismissal was gross misconduct, primarily for engaging in sexual activity in the workplace. The Claimant does not dispute that she engaged in sexual activity in the workplace during work hours. This is clearly an act of gross misconduct taken into context the fact it's a family friendly restaurant and the Claimant was a deputy manager engaging in sexual activity with a junior member of staff.
- b) There is no reasonable basis to claim that there was a failure to follow a reasonable process in reaching the decision to dismiss. Dismissal is within range of reasonable responses.
- c) There is no reasonable prospect of persuading a Tribunal that the dismissal was unfair. The claim is therefore struck out.

3. Section 104A Employment Rights Act 1996

- a) Taking the claim at its highest, the Claimant has potentially raised a claim that she was dismissed for alleging that there had been a breach of data protection in relation to her data, specifically accessing and sharing the CCTV footage of the sexual activity. This would amount to a disclosure of information tending to show a breach of a legal obligation under section 43B ERA 1996.
- b) However, the Claimant has no reasonable prospect of establishing that this disclosure in her grievance was made in the public interest, on the basis it relates only to her data. In addition, she has no reasonable prospect of establishing that she was dismissed for making that disclosure. The disclosure occurred well after the disciplinary investigation was triggered. The claim is struck out under rule 38(1)(a)

4. Failure to Make Reasonable Adjustments – 20-21 Equality Act 2010

- a) There is sufficient information in the claim form to engage a claim for failure to make reasonable adjustments under sections 20-21 Equality Act 2010. The claim was not responded to by the Respondent and therefore there is no evidence to assess if that claim has reasonable prospect of success. This application therefore fails.
- b) However, the claim is be struck out under rule 30(1)(d) Employment Tribunal Rules because the Claimant has not actively pursued the claim.
- c) The Claimant has not complied with orders to produce written arguments and did not attend the hearing, without explanation for her non- attendance.
- d) The decision to strike out is taken having considered the overriding objective to
 - (i) ensure that the parties are on an equal footing,
 - (ii) deal with cases in ways which are proportionate to the complexity and importance of the issues,

- (iii) avoid unnecessary formality and seeking flexibility in the proceedings,
 - (iv) avoid delay, so far as compatible with proper consideration of the issues, and
 - (v) saving expense.
- e) It is not in the interests of justice to allow a claim to continue when the Claimant is not engaged in pursuing that claim.

Approved by:
Employment Judge Bann
Dated: 30 July 2026

