



EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr F Ogunnote**

**Respondent**  
**v Abellio London Limited**

**Heard at: London South**

**On: 11 April 2022**

**Before: Employment Judge Truscott QC**  
**Ms A Williams**  
**Ms C Upshall**

**Appearances:**

**For the Claimant: No appearance or representation**  
**For the Respondent: Ms T Patala solicitor**

**JUDGMENT**

The claim is struck out under Rule 37(1)(d) on the ground that it is not being actively pursued.

**REASONS**

1. This hearing was listed to determine the claimant's claim of a breach of section 11 of the Employment Relations Act 1999. There was no appearance by or on behalf of the Claimant. The Respondent applied for the claim to be struck out.
2. The matter giving rise to the complaint took place on 8 April 2020. There was a telephone Preliminary Hearing on 11 February 2021 paragraph 3 of which provides: **It was agreed** between the parties that the issues could be dealt with by an EJ without a formal hearing in person on the basis of the parties' written statements and/or submissions of fact and law including liability and remedy (compensation not exceeding two weeks pay under section 11(3) of the Act), which must be submitted to the Croydon Tribunal **by 11 March 2021**. The parties must confirm in writing at that time whether they continue to consent to the issues being dealt with on paper, or whether they require a Hearing by CVP limited to 2 hours.
3. The Respondent filed written submissions on 11 March 2021 and suggested that a hearing should take place as the Claimant should give evidence as to his loss. The Claimant's representative did not respond nor did he comply with the Order. The Respondent applied for an Unless Order which was granted on 12 November 2021. The Claimant's representative provided a witness statement, a schedule of loss and written submissions on 19 November 2021.

4. The hearing had been listed on 25 March 2022 with CVP details being provided on 8 April 2022. On 11 April 2022, the clerk to the Tribunal checked the file and found no correspondence from the Claimant's representative in relation to this hearing. The clerk also telephoned the Claimant's representative and left a message for him. There has been no response.

## Law

### STRIKING OUT

5. Rule 37 provides:

#### Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response 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 or response (or the part to be struck out).

### DISCUSSION and DECISION

6. The ground relied on in this case is that the claim is not being actively pursued relying on rule 37(1)(d). The Tribunal considered that the claim was not being actively pursued.

7. The Tribunal acknowledged, as per paragraph 5 of **Blockbuster Entertainment Limited v. James** [2006] IRLR 630, that rule 37 is a "draconic power, not to be readily exercised". The Tribunal is satisfied, having regard to the nature of the claim and its history that a strike out is proportionate and appropriate.

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**Employment Judge Truscott QC**

**Date 11 April 2022**