



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr G Smith

v

**Respondent:**

Castle Wildish Residential Limited

**Heard at:** London South (via CVP)

**On:** 10 September 2024

**Before:** Employment Judge Fredericks-Bowyer

**Appearances**

For the claimant: Did not attend

For the respondent: Mr T Goldup

## STRIKE OUT

1. The hearing continued in the absence of the claimant under Rule 47 Employment Tribunal Rules of Procedure 2013.
2. The claimant's claims are struck out under Rule 37(1)(d) Employment Tribunal Rules of Procedure 2013 because they have not been actively pursued.

## REASONS

**Background**

1. By a claim form received on 24 August 2022, the claimant brought claims for:-
  - 1.1. Wrongful dismissal/unpaid notice pay;
  - 1.2. Unpaid holiday pay;

- 1.3. Unpaid commission;
  - 1.4. Unpaid car allowance;
  - 1.5. Failure to provide written statement of particulars of employment; and
  - 1.6. Disability discrimination (direct discrimination, discrimination for something arising from a disability, and failure to make reasonable adjustments).
2. The respondent denied all of the claims. The case came before Employment Judge L Clarke on 27 February 2024 in a case management hearing. The claimant attended that hearing. That hearing listed this public preliminary hearing with the primary reason of determining whether or not the claimant was disabled by the conditions he relied upon at the time to which his claim relates. The secondary reason for the hearing was to consider if any further case management orders were necessary. The claimant, having attended the hearing and been sent the case management orders containing the listing, was aware of this hearing being due to take place.
  3. EJ L Clarke made several orders at that previous hearing which would involve the claimant's input. They were:-
    - 3.1. By 12 March 2024, to send the respondent and the Tribunal a schedule of the costs he was intending to make for a preparation of time application;
    - 3.2. By 9 April 2024, to send to the respondent parts of his GP and medical records which relate to his disability, together with any other relevant evidence about disability; and
    - 3.3. By 1 May 2024, to send the respondent any additional disclosure to that sent to him, including documents relating to his injury to feelings and other remedy.
  4. The claimant did not complete any of these steps. The respondent says, and I accept, that the last contact from the claimant came on 28 February 2024. It may be arguable that the claimant decided not to pursue his costs application, but he has sent no correspondence confirming that. It might be that he considered that there was little to add of relevance from his GP records and medical information, but he did not write about that or withdraw his disability claim, either. I can think of no justifiable reason why the claimant would not send documents relating to remedy.
  5. The respondent e-mailed the claimant on 17 April 2024 and commented on the lack of medical documentation. The claimant did not reply. The respondent made a written application to the Tribunal on 2 May 2024 asking for the claim to be struck out because it was not being actively pursued. The claimant was copied into that correspondence but did not reply or raise any objection.
  6. The respondent wrote to the Tribunal again to reaffirm and check on the progress of the strike out application on 28 August 2024 and 2 September 2024. The claimant was copied into those e-mails. He did not respond or object to the possibility that his claim may be struck out in its entirety because he was not actively pursuing it.

7. Yesterday (9 September 2024), Acting Regional Employment Judge Khalil wrote to the parties to inform them that the respondent's application would be heard in this hearing. The claimant did not respond to that e-mail and did not attend the hearing today. He did not answer the telephone when the Tribunal tried to make contact with him at 10:05am. He did not respond to the e-mail sent to him at the same time informing him of the hearing and asking him to join. He did not join the hearing whilst it was taking place.

**Should the claim be dismissed because the claimant did not attend?**

8. Rule 47 allows a claim to be dismissed, or for the hearing to continue in the absence of a party, where the claimant does not attend the hearing. I considered whether the claim should be dismissed under this rule. The claimant had notice of this hearing and had not given any reason for non-attendance. I decided instead to conduct the hearing in the claimant's absence, considering that this would be a fairer way to conduct proceedings. This is a preliminary hearing and the hearing was not originally intended to dispose of the whole claim. If the respondent's application had not succeeded, then there was a chance that the disability determination might be postponed until the final hearing, which would mean the claims could continue. In my judgment, it was in the claimant's interest (despite his non-attendance) for the hearing to continue in his absence rather than the claim be dismissed.

**Alternatively, should the claim be struck out?**

9. Rule 37(1)(d) allows a claim to be struck out where it is not being actively pursued. Given the history outlined above, I consider that the claimant stopped actively pursuing his claim from 28 February 2024. This was the last contact he made in respect of the claim. He has not complied or raised an issue with any case management orders since that date.
10. Rule 37(2) provides that a claim cannot be struck out unless the claimant has adequate warning of it and has the opportunity to make representations to object to the strike out proposed. In my view, the claimant has been aware of the respondent's intention to strike out the claim since 2 May 2024. He was copied into further e-mails about that on 28 August 2024 and 2 September 2024. He did not take any of those opportunities to object to the proposal or to begin to actively pursue his claim once more. On 9 September 2024, the claimant was told that the application would be heard on 10 September 2024, at a hearing of which he had prior notice. He did not respond to that e-mail and he did not attend the hearing to make representations despite having the opportunity to do so. I consider that the bar to strike out put in place by Rule 37(2) is not effective here. The claim may be struck out.
11. I must then consider whether it is proportionate in the circumstances for the claim to be struck out. The claimant has not actively pursued his claim for over six months. The respondent has continued to comply with orders during that time. The claimant has not complied with orders in that period because he was no longer pursuing his claims. The claimant is the party bringing claims in the Tribunal. They are, at least in the initial stages of analysis, his claims to bring and to prove. The claims cannot be advanced if they are not being actively pursued. It would be a nonsense for the case

to continue in these circumstances, with the respondent required to produce witness statements and attend a hearing for a claim which is not being pursued by the party with the burden to make it good.

**Strike out**

12. In my judgment, it is plainly proportionate to strike out the claims in their entirety. I do so, and they are now struck out.

**Employment Judge Fredericks-Bowyer**

**Dated:** 10 September 2024