



EMPLOYMENT TRIBUNALS

Claimant: Mr J Lawrence

Respondent: Lloyds Bank plc

OPEN PRELIMINARY HEARING

Heard at: London East (by video) **On:** 26 September 2022

Before: Employment Judge C H O'Rourke

Representation

Claimant: In person

Respondent: Mr T Welch – Counsel

JUDGMENT

1. **The Claimant's claims of unfair dismissal and disability discrimination are struck out, subject to Rule 37 of the Tribunal's Rules of Procedure 2013.**
2. **The Respondent's title is amended to Lloyds Bank Plc.**

REASONS

Background and Issues

1. The Claimant was employed by the Respondent as a customer banking assistant, for ten years, until his dismissal, for alleged gross misconduct, with effect 4 December 2020.
2. He brought a claim on 14 April 2021 [2 (PDF numbering in the Respondent's first half of bundle)], alleging unfair dismissal and disability discrimination. The Respondent filed a response, denying any liability and the claim was listed for a preliminary case management hearing on 15 November 2021 and in the interim, the Tribunal issued standard case management orders, as to provision of a schedule of loss (19 August 2021) and for the Claimant to prepare a first draft of a schedule of issues (9 September 2021) [34].

3. That hearing proceeded and the Tribunal made the following orders (of relevance to the matters before me) [11 part 2] that the Claimant:
 - a. By 13 December 2021, '*fill in the gaps identified by the Respondent in the list of issues*';
 - b. By 14 January 2022, provide up-to-date GP records;
 - c. By 18 March 2022, disclose documents to the Respondent;
 - d. By 24 June 2022, exchange witness statements.
 - e. He was informed in the Case Management Order (paragraph 20) that if any of those orders were not complied with the Tribunal may '*... strike out the claim ...*'.
4. On 3 February 2022, the Claimant wrote to the Respondent, in response to a query about the medical documents, to state that he had requested them, but they had not yet been provided to him and that he would '*chase this immediately and get any relevant documentation to you post haste*' [17]. This was to be the last item of correspondence from him for some time.
5. On 25 February 2022, in response to correspondence from the Respondent, the Tribunal ordered the Claimant to provide any input he had to the list of issues by within fourteen days and to forward any additional medical documentation within seven days of his receipt of it [20].
6. On 8 April 2022, the Respondent wrote to the Tribunal (all correspondence copied to the Claimant), requesting a strike out order, under Rule 37 of the Tribunal's Rules of Procedure, on the basis that the Claimant had failed to comply with Tribunal orders and that his claim was not being actively pursued [25]. It set out the orders that had not been complied with, as to the list of issues, provision of medical documents and disclosure of documents, generally. It also set out a list of ten emails, sent to the Claimant over the period November 2021 to March 2022, to which he'd not responded. In response, the Tribunal listed this Hearing [28].
7. On 15 June 2022, the Respondent wrote again to the Tribunal, setting out further failures by the Claimant to respond to their correspondence, up to and including May 2022 and requesting that their application be dealt with on the papers [33].
8. The Tribunal responded on 11 July 2022, asking the Claimant if he was still pursuing the claim [34].
9. On 9 August 2022, the Tribunal issued a strike-out warning, inviting the Claimant's objections by 17 August 2022 [38]. Apparently unbeknownst to the Judge issuing that warning, the Claimant had responded to the Tribunal's earlier enquiry, by email of 18 July 2022, to an individual clerk in the Tribunal (rather than the general email address) and not copied to the Respondent, stating '*I am still pursuing the claim*' [42].

10. On 22 August 2022, the Respondent having queried whether or not the claim was struck out [40], the Tribunal responded, enclosing a further email from the Claimant, of 16 August 2022 (again, not copied to the Respondent), stating that '*I am writing to object to the strike out warning letter ... I have complied with the order of the Tribunal dated 11 July 2022 ...*' (providing a further copy of his email of 18 July 2022) [42].
11. The only substantive issue before me, therefore, was to decide whether, subject to Rule 37, the Claimant's claims should be struck out.

The Law

12. Rule 37 states:

Striking out

37.—

(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 ...;

(b) that ...;

(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).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

13. In deciding whether to strike out a party's case for non-compliance with an order under rule 37(1)(c), a tribunal will have regard to the overriding objective set out in rule 2 of seeking to deal with cases fairly and justly. This requires a tribunal to consider all relevant factors, including:

- the magnitude of the non-compliance;
- whether the default was the responsibility of the party or his or her representative;
- what disruption, unfairness or prejudice has been caused;
- whether a fair hearing would still be possible, and

- whether striking out or some lesser remedy would be an appropriate response to the disobedience (**Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371, UKEAT**).
14. For a tribunal to strike out for unreasonable conduct, it must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, the striking out must be a proportionate response — **Blockbuster Entertainment Ltd v James [2006] IRLR 630, EWCA**.

Conclusion

15. I heard submissions from both parties, as well as having had the opportunity to read the correspondence between the parties and the Respondent's application for strike out. The Claimant had provided no written submissions in response to the Respondent's application, beyond his brief statement that he was still pursuing the claim.
16. Mr Welch submitted that the Claimant's wilful non-compliance with orders and prolonged failure to engage in advancing his claim, or responding to correspondence was egregious and entirely justified strike-out.
17. The Claimant offered very little by way of explanation for his behaviour. He accepted that he had not complied with the orders set out in the application and apart from his response to the request for medical documents in early February 2022, he had not further engaged with either the Tribunal or the Respondent, until his two brief emails of July and August, simply asserting, without any attempt at justification that he was still pursuing his claims. His only attempt now at explanation was that he stated that his medical condition (which he has previously stated is OCD), adversely affected his ability to engage in non-verbal communication. This is not something that he had previously stated and he had provided no medical evidence whatsoever to support such an assertion.
18. I concluded that the Claimant's claims should be struck out, for the following reasons:
- a. He had failed, repeatedly and without adequate explanation to comply with the Tribunal's orders, over a period of a year, both in respect of setting out the detail of his claim, or of evidence required to support his claim of disability discrimination, or to provide documents, generally. This was despite several warnings from the Tribunal (and in correspondence from the Respondent) that continued failure to do so may result in his claims being struck out.
 - b. This is a substantive non-compliance, preventing the Respondent from deciding whether or not it disputes the issue as to whether or not the Claimant is disabled, itself determining what evidence or submissions the Respondent may need to adduce at any final hearing and also the length of that hearing. This clearly prejudices the Respondent in the preparation of their case and if permitted to continue would mean that they would not know the nature of the

claim they have to face at final hearing, or perhaps only at the last minute. This failure on the Claimant's part also disrupts both the Respondent's ability to respond in a timely and proportionate way to the claims, instead incurring unnecessary costs, but also wastes the Tribunal's resources.

- c. While I note that the Claimant is a litigant-in-person, many such litigants manage to comply with such orders. The default is clearly his responsibility alone.
- d. A fair hearing is not currently possible, as the Respondent is unable to assess the discrimination claim against it, or the evidence the Claimant is likely to advance in respect of either claim.
- e. I see no lesser sanction that could be appropriately applied that might rectify this situation. The Claimant has been left in no doubt as to the requirements upon him, but has (even to the date of today's hearing) consistently failed to comply and ignored correspondence. In view of that continued failure, without any real attempt at explanation and there being no stated intention by him that he would, in the near future, do so, I see no prospects of any further orders being complied with and accordingly consider that a fair trial, as currently listed in May of next year, would not be possible.

Judgment

- 19. For these reasons, therefore, the Claimant's claims of unfair dismissal and disability discrimination are struck out.

**Employment Judge O'Rourke
Dated: 26 September 2022**