



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Kostiuk  
**Respondent:** Whitbread Group Plc  
**Heard at:** Bristol                      **On:** 9 May 2023  
**Before:** Employment Judge Midgley

## **Representation**

**Claimant:** No attendance or representation  
**Respondent:** Mr P Singh (Solicitor)

# JUDGMENT

## **Pursuant to Rules 37 and 47 of the Employment Tribunal Rules**

1. The claim is struck out on the grounds that the claimant has failed to attend the hearing and/or failed comply with case management orders with the result that a fair hearing was not possible on the dates listed for the final hearing and/or the claim is not actively being pursued by the claimant.

### Summary Reasons

2. The claimant failed to comply with the case management orders to exchange documents, agree a bundle of documents for the hearing or to produce and exchange witness statements. He ignored correspondence from the respondent requesting his compliance with such Orders, save for the last (asking for him urgently to exchange statements) to which he replied that he did not know what was required. He was directed towards the case management Orders and other sources of information. He did not respond.
3. The claimant has provided no explanation for his failure to comply with case management Orders.
4. The claimant seeks compensation for financial loss following his dismissal but failed to respond to the respondent's requests to disclose documents showing his attempts to mitigate those losses by applying for or taking other. The bundle was produced without the claimant's documents and without any mitigation documents.
5. If the claim were to succeed, the burden would be on the respondent to show

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that the claimant has failed to mitigate his loss. The respondent is entitled to see what efforts the claimant has made to secure new employment and, where those efforts are successful, to see what income he has received from such employment. The Tribunal would need to consider that evidence to determine what compensation it would be just and equitable to award. In its absence, it could not make such an assessment and it might be necessary to adjourn the hearing for the evidence to be disclosed.

6. The claimant's conduct is therefore unreasonable and has had the effect that a fair hearing would not possible today. There are, therefore, reasonable grounds for the claim to be struck out.
7. On 8 May 2023 (a bank holiday) at 18:42 the claimant emailed the respondent and the Tribunal to say that he had a sickness bug which began on Sunday 7 May 2023 and could not attend the hearing which was listed on 9 May 2023. The claimant knew that the respondent's representative was travelling to Bristol from Glasgow the day he sent the email.
8. He did not formally apply to the Tribunal for a postponement, but his email, if read broadly and generously, would suggest that such an application might have been intended. However, the email did not address his non-compliance with case management orders or make any proposal for how or when the claimant would comply with them so that the case would be ready for a final hearing.
9. The claimant did not seek to make an adjournment application at the hearing by requesting permission to attend by video or telephone, and there is no obvious sign that he has made any real effort to attend the hearing.
10. These are summary reasons to assist the parties; they do not replace the full written reasons which will be provided pursuant to rule 62 if a request is made.

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Employment Judge Midgley  
Date 9 May 2023

Judgment sent to the Parties on 19 May 2023

For the Tribunal Office