



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000356/2024

Employment Judge M Whitcombe

Mr P Doslik Smith

Claimant

Alfa Tail Lifts Ltd

Respondent

JUDGMENT

The whole of the claim is struck out under rule 37(1)(d) of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 because it has not been actively pursued.

REASONS

1. This case was listed for a 4 day final hearing on 3, 4, 5 and 6 December 2024. The complaints were of direct sex discrimination, indirect sex discrimination, victimisation and automatically unfair dismissal for the sole or principal reason of having made a protected disclosure.

2. At a preliminary hearing for case management on 27 August 2024 I said in relation to the claims brought under the Equality Act 2010:

“By the end of about 45 minutes of discussion today, against the background of the narrative parts of the claim form and the claimant’s case management agenda, I could not identify a complaint of direct sex discrimination, indirect sex discrimination or victimisation with a reasonable prospect of success.”

3. At paragraph 31 of the resulting Order I also analysed each of the arguments made by the claimant and suggested that the essential building blocks of each type of discrimination appeared to be missing. I therefore gave the claimant 21 days to take advice and consider his position, before confirming either that the complaints of direct sex discrimination, indirect sex discrimination and victimisation were withdrawn, or else providing some essential further information. The claimant was required to do those things by a deadline of 17 September 2024.
4. On 26 September 2024 the respondent applied for a judgment striking out the complaints brought under the Equality Act 2010 (but not the whole claim) under rules 37(a), (c) or (d) of the ET Rules of Procedure 2013 and suspending the rest of the case management order. The respondent also observed that the claimant had failed to provide essential further details of the protected disclosure(s) relied on for the purposes of the unfair dismissal claim, or a Schedule of Loss.
5. The claimant did not provide any comments in reply to the respondent’s application. On 25 October 2024 he was chased for his comments by 1 November 2024. Once again, no reply was received. On 6 November 2024 the respondent sought a decision on its application. The claimant was copied in, as rule 92 requires. He did not reply.
6. On 25 November 2024 the Tribunal issued two strike out warnings to the claimant. The first contained an erroneous deadline of 12 noon on 29 December 2024. That was my fault, and I caused Legal Officer Demir to make the same error. The deadline of 29 December 2024 was, of course, an error for 29 November 2024. A deadline of 29 December 2024 would have been after the hearing and was also a Sunday. Almost immediately, the respondent pointed out that mistake and new correspondence was issued later the same day.
7. Against that background, on 25 November 2024 Legal Officer Demir warned the claimant that she was considering referring the case to an Employment Judge who would decide whether the claim, or part of it, should be struck out under rule 37(1)(d) on the basis that it had not been actively pursued. The direction in correspondence of that date (with a minor typographical error) was that the claimant should reply by 12 noon on 29 November 2024 if he disagreed, giving reasons, or else request a hearing at which he could put forward those reasons. The claimant was explicitly warned that if nothing was heard from him within that timescale the Employment Judge would make a decision on striking out the claim, or part of it, on the information available. No reply was received.

8. I find that the claimant has not engaged with the respondent, the ET's correspondence or preparation for the final hearing since the preliminary hearing for case management on 27 August 2024. Neither the respondent nor the Tribunal has received any further correspondence from the claimant since that hearing. Consequently, the claimant is in breach of several orders which were necessary to bring this case to a fair and efficient hearing in accordance with the overriding objective. I have reached the conclusion that the claim is no longer actively pursued. Additionally, the claimant's failure to engage and to comply with orders has made a fair hearing impossible on the dates listed. That applies to all of the complaints, and not just those brought under the Equality Act 2010.
9. For those reasons, I strike out the entire claim under rule 37(1)(d) on the basis that it has not been actively pursued. If necessary, I could alternatively have based the decision on rule 37(1)(c), because the claimant's failure to comply with an order of the Tribunal has made a fair hearing on the dates listed impossible.

M Whitcombe

Employment Judge

29 November 2024

Date of judgment

**Entered in register
and copied to parties**

29 November 2024