



# EMPLOYMENT TRIBUNALS

Claimant  
Mr M Morland

Respondent  
Turning Point

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS  
EMPLOYMENT JUDGE GARNON

ON 6<sup>th</sup> November 2017

### *Appearances*

For Claimant: No attendance  
For Respondent: Mr S Chegwin Solicitor

### JUDGMENT

The claim is struck out in whole

### REASONS ( bold print is my emphasis)

#### 1 The Law

1.1. Rule 2 of the Employment Tribunal Rules of Procedure 2013 ( the Rules) provides their overriding objective is to **enable** Tribunals to deal with **cases** fairly and justly which includes, in so far as practicable (a)ensuring the parties are on an equal footing (b) avoiding delay and (c) saving expense. An Employment Judge must seek to give the effect to the overriding objective in interpreting, or exercising any power under the Rules. Parties and representatives must assist the Tribunal to further the overriding objective and in particular co-operate generally with each other and with the Tribunal.

1.2. My reason for emboldening the words “ enable” and “ cases” is that it is not only this case Employment Judges and Tribunal staff have to deal with. The overriding objective was created when the Civil Procedure Rules were reformed under the direction of Lord Woolf in the early 1990s. His Lordship emphasised in a number of cases, eg Beachley Properties v Edgar, the concept of ensuring just handling of cases was not confined to the case in question. The proper administration of justice was not to be disrupted by parties’ failure to comply with orders or other unreasonable behaviour.

1.3. Rule 37 includes

*(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 .. on any of the following grounds—  
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant .. has been.., unreasonable ...;*

*(c) for non-compliance with any of these Rules or with an order of the Tribunal;  
(d) that it has not been actively pursued*

*(2) A claim ... 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.*

1.4. The Employment Tribunal Rules of Procedure) 2004 were similarly worded so cases decided under them remain good guidance in exercise of the powers under the 2013 rules . The EAT (Burton P.) in Bolch-v-Chipman.2004 IRLR 140 held the sanction of strike out should only be ordered where a fair trial of the action is no longer possible. The Court of Appeal appeared to agree in Blockbuster Entertainment v James,2006 IRLR 630. If these cases elevated the possibility of a fair trial to being the only valid consideration it would deprive the Rules of their effectiveness in preventing unreasonable conduct. The respondent's representative cited a 1992 case Executors of Evans-v-Metropolitan Police and a 2008 case Rolls Royce-v-Riddle saying that where there had been intentional and contumelious default or inordinate and unreasonable delay such as to produce a substantial risk that a fair trial would not be possible, strike out could be ordered applying the same principles as in Birkett-v-James . While I do not disagree, I do not think these are the most appropriate modern authorities.

1.5 In Haddad-v- Salford Council ( HHJ Serota) and Essombe-v-Nando's Chickenland ( HHJ Clark) a stricter line was taken where there was persistent failure without reasonable cause to comply with Orders. That approach was approved by the Court of Appeal in Governors of St Albans Girls School-v-Neary 2010 ICR 473.. Agreeing with the lead judgment of Smith LJ, Sedley LJ indicated , nothing he had said in Blockbuster should be taken as licence to disregard orders. In Essombe Judge Clark said; "*We also accept the public policy argument ... Tribunal orders are there to be obeyed; otherwise cases cannot be properly case-managed and fairness achieved between the parties*".

## **2 The Facts**

2.1. A full hearing was to have taken place today and tomorrow. The respondent by letter of 23<sup>rd</sup> October set out a catalogue of failures by the claimant to comply with orders and his failure actively to pursue his case. What they alleged is corroborated by the Tribunal file.

2.2. The claim of unfair dismissal was originally listed for one day. The claimant was at that time represented. Automatic directions sent on 20<sup>th</sup> June required a schedule of loss by 19<sup>th</sup> July and disclosure of documents by 1<sup>st</sup> August. The claimant's representatives complied. On initial consideration of the file on 14<sup>th</sup> August after the response was received, I took the view a one day listing was not long enough , so it was postponed from 10<sup>th</sup> October to 6<sup>th</sup> and 7<sup>th</sup> November and the timing of the original orders varied . A document bundle was to be prepared by 25<sup>th</sup> September and witness statements exchanged by 9<sup>th</sup> October. The parties agreed extensions of time for the

bundle to 2<sup>nd</sup>, and witness statements to 20<sup>th</sup> October. The claimant's representatives wrote on 28<sup>th</sup> September to the respondent's solicitors asking for a further extension of time for the preparation of the bundle to 6<sup>th</sup> October as their client had been delayed in providing them with documents. The respondent's representatives agreed.

2.3. On 10<sup>th</sup> October the claimant's representatives wrote to the respondent's solicitors and the Tribunal saying they were no longer acting for the claimant. The respondent's solicitors then initiated direct correspondence with the claimant by an email asking him to confirm as a matter of urgency he was continuing to pursue his claim. They obtained a delivery receipt for that email.

2.4. They received no reply, so wrote on 11<sup>th</sup> October with a copy of their earlier email requesting an urgent response. Still having heard nothing they telephoned his mobile phone on 13<sup>th</sup> October but obtained no answer nor was there a voicemail facility. They emailed him again at 11:47 that day. They heard nothing, so a letter was posted to the claimant, signed for by him 13:09 on 16<sup>th</sup> October, enclosing a copy of the bundle, requesting any outstanding documents and reminding him the date for witness statement exchange was 20<sup>th</sup> October. They rang him again on his mobile and his house phone but received no answer.

2.5. On 20<sup>th</sup> October they had heard nothing from the claimant as regards witness statement exchange so emailed him. There was no response. They called his mobile again but there was still no response. They sent another email with a request for a delivery receipt which was obtained. That email warned the claimant that if they did not receive his statement that evening along with any outstanding documents, they would write to the tribunal requesting an order for a strike out. At the date of making their application on 23<sup>rd</sup> October they had heard nothing. In short the claimant has ignored all orders, failed to reply to the respondent or notify the Tribunal of any problem he had.

2.7. On 24<sup>th</sup> October Employment Judge Johnson caused a strike out warning letter to be sent to the claimant giving him until 31<sup>st</sup> October to show cause in writing why his claim should not be struck out or apply for a hearing. He wrote on 30<sup>th</sup> October requesting a hearing. Employment Judge Buchanan postponed the second day of the listed hearing and said the first would be used to consider the strike out application. Today, the claimant failed to attend.

### **3. Conclusions**

3.1. I cannot overstate the problems caused to Employment Tribunals and, more importantly other litigants. When parties, through failure to comply with orders which are made to help them present their claims in an orderly fashion, are guilty of such contumelious disregard of those orders as I see in this case. I have rarely seen a case in which a party has been so obviously guilty of failure to comply with orders, failure actively to pursue his case and unreasonable conduct of the proceedings.

3.2. He has been given several chances to remedy the situation and taken none of them. I find this is an exceptional case warranting a strike out in whole.

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**TM Garnon Employment Judge**

**Date signed 6<sup>th</sup> November 2017  
SENT TO THE PARTIES ON**

**8 November 2017**

**G Palmer  
FOR THE TRIBUNAL**