EMPLOYMENT TRIBUNALS

Claimant: **Mr E Evans**

Respondent: **Maritime and Coast Guard Agency**

JUDGMENT

1. The complaints of
   1. Unfair dismissal and
   2. disability Discrimination
are struck out in their entirety.

2. The hearing listed for four days on 22,23,24 and 25 March 2022 is vacated.

REASONS

1. By a letter dated 16 March 2022 the Tribunal gave the Claimant an opportunity to make representations or to request a hearing, as to why the entirety of the complaints of Unfair dismissal and Disability discrimination in claim 1403894.2020 should not be struck out because

- the claimant had not complied with the Orders of the Tribunal dated 3 December 2021 and 7 February 2022.
- it has not been actively pursued.
- it is no longer possible to have a fair hearing of the complaints of unfair dismissal and/or Discrimination , because the claimant has failed to provide disclosure of documents, has failed to agree an index to a bundle of documents; has failed has failed to agree a bundle and has failed to exchange witness statements.

Reasons.

The Claimant has failed to comply with the orders of the tribunal contrary to Rule 37(1)(c)

In *Weir Valves & Control (UK) Ltd v Armitage [2004] ICR 371*, the EAT held that the Tribunal must be able to impose a sanction where there has been wilful disobedience to an order. The guiding consideration is the overriding objective to do justice between the parties. In considering whether strike out or a lesser remedy is appropriate, relevant factors include: the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and whether a fair hearing is still possible.

I have applied these principles in this case, and conclude that in this case the Claimant has been given a number of opportunities to deal with the preparation of the claim, and to take the necessary steps to comply with directions; to agree a bundle and prepare and exchange witness statements.

In response to being asked to explain previous failures to comply with directions, the claimant asked for a stay on two occasions, both of which applications were refused, and case management orders were amended so that he would still be able to comply and prepare for the hearing listed for 4 days starting on 22 March 2022.

The claimant has failed to comply with the amended case management orders made on 7 February 2022, which themselves amended earlier amended orders made in December 2021.

A strike out warning was issued by the Regional Judge Pirani on 16 March 2022 for a failure to comply with Case management orders and for a failure to actively pursue the claim. The claimant was given until 12 Noon on 18 March 2022 to respond . No response has been received.

The hearing listed to start on 22 March 2022 will not be able to go ahead as a fair hearing is no longer possible.

Rule 37(1)(d) – The claim has not been actively pursued

Birkett v James [1978] AC 297 establishes that broadly there are two types of case where this ground applies:

- Where, through intentional and contumelious default, the claimant has failed to comply with an order and it has been made clear that their claim would be struck out unless they complied with the order within the time allowed.
- Where inordinate and inexcusable delay on the part of the claimant or their representatives has created a substantial risk that serious prejudice has been, or will be, suffered by the respondent, or that it is no longer possible to have a fair trial of the issues.

I have considered the EAT's judgment in *Khan v London Borough of Barnet UKEAT/0002/18* in which the Claimant's claim was struck out on the grounds that it had not been actively pursued.

I have applied the reasoning to this case, and conclude that here the correspondence that has been sent to the Claimant by the Tribunal throughout has

been in clear terms and the language used has been relatively straightforward. The Claimant has not stated he does not understand any of the orders. Since the orders made on 7 February 2022, the Claimant has not provided any reason at all to explain his lack of engagement with this process. He has not demonstrated a real intention to progress his claim.

The result of the Claimants failures is that the Respondent has not received any disclosure documents or a witness statement from the Claimant, so has been unable to prepare questions on his evidence in time for the final hearing.

Employment Judge **Rayner**
Date: 21 March 2022

Judgment sent to parties: 21 March 2022

FOR THE TRIBUNAL OFFICE