



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R Willerton

v

**London Underground
Limited**

Heard at: London SOUTH (by video)

On: 14 April 2023

Before: Employment Judge P Klimov

Representation:

For the Claimant: No attendance and no representation

For the Respondent: Mr O Holloway, counsel

JUDGMENT

All claimant's claims in these proceedings are struck out.

REASONS

1. By a claim form presented on 28 January 2022 the claimant brought complaints of unfair dismissal, age discrimination, disability discrimination, notice pay, arrears of pay and holiday pay. His complaints appear to relate to his dismissal by the respondent for gross misconduct and the disciplinary process leading up to the dismissal, however the allegations of age and disability discrimination are unclear, and the "money claims" equally require further details.
2. The respondent presented a response denying all the claims and seeking further and better particulars of the complaints.

3. On 9 September 2022, the Tribunal listed the case for a preliminary hearing (case management) on 24 February 2023 and for the final hearing over 5 days, starting on 22 April 2024.
4. On 24 February 2023, the preliminary hearing took place before Employment Judge Siddall. The respondent was represented at the hearing. Neither the claimant nor his representative attended the hearing. The clerk tried but was unable to contact either of them.
5. EJ Siddall re-listed the preliminary hearing for 14 April 2023 and ordered the claimant "*to notify the tribunal either that he wants to continue with his claims or that he wants to withdraw them in writing within 14 days of the date of this order. If he does not reply a judge will consider whether the claim should be struck out on the grounds that it has not been actively pursued*".
6. The claimant did not respond to the EJ Siddall's order. The claimant did not contact the respondent about his claims and the forthcoming preliminary hearing, despite the respondent sending him a draft agenda for the hearing. The claimant had not contacted the respondent before the preliminary hearing on 24 February 2023 either.
7. Neither the claimant nor any representative for him joined the hearing today by 9:40am, as instructed. His former representative, Mr Herrera, informed the Tribunal on 16 February 2023 that he was no longer representing the claimant, and the Tribunal should correspond with the claimant directly. No new representative for the claimant came on record.
8. The clerk tried to contact the claimant by phone but was unable to get through. At 10am, I asked the clerk to send the following email to the claimant and leave the same voice message on his phone, which the clerk did:

The preliminary hearing in your case is about to start. You failed to attend the previous hearing on 24 February 2023 and did not answer the phone. The hearing was scheduled for today and you were notified of the hearing and sent the joining instructions. You did not join the hearing and did not answer the phone [when] (sic) the clerk called. You must join the hearing without delay. If you do not join the hearing by 10:15am, the hearing will proceed in your absence. Your claim may be dismissed and you may be ordered to pay the respondent's costs.
9. The claimant did not reply. He did not join the hearing.

10. I started the hearing at 10:15am. Upon hearing Mr Holloway's submissions, I decided to strike out the claimant's claim under Rule 37(1)(d) of the Employment Tribunals Rules of Procedure 2013¹.
11. Since presenting his ET1 on 28 January 2022 the claimant has failed to engage with his claim in any meaningful way. He did not attend the first preliminary hearing, he did not engage in correspondence with the respondent, he did not respond to the EJ Siddall's order, he did not attend the today's hearing, he did not reply to the clerk's email and voicemail, he did not seek the first or today's preliminary hearing to be postponed.
12. I, therefore, find that the claimant has lost interest in his claim and is not actively pursuing it. Therefore, the rule 37(1)(d) is engaged.
13. The claimant was warned by EJ Siddall's order that his claim may be struck out and was given a reasonable opportunity to make representations. He did not reply.
14. His claim is poorly pleaded, and it is not possible to progress it without the claimant engaging in the process and explaining his complaints, which the claimant is refusing to do, despite being given two specific opportunities and ample time to do so. I find the claimant's conduct in not engaging with the proceedings is intentional and shows a complete disregard for the Tribunal process.
15. In the circumstances, I find it is just and proper for me to exercise my discretion and strike out the claimant's claim.
16. The final hearing on 22-26 April 2024 is vacated.

Employment Judge Klimov

14 April 2023

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¹ 37.— Striking out

(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—

[...];

(d) that it has not been actively pursued;

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant (s) and respondent(s) in a case.