



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Younas

**Respondent:** International Television Channel Limited

**Heard at: London South (remotely by CVP)**

**On: 13 February 2023**

**Before: Employment Judge Heath**

## **Representation**

Claimant: Mr L Betchley (Counsel)

Respondent: Ms Y Barlay (Consultant)

# JUDGMENT

The claimant's claims are not struck out.

# REASONS

## Background

1. At a Case Management Preliminary Hearing on 11 October 2022 EJ Webster listed this matter for a final hearing over five days from 2 May 2023 to 8 May 2023. She made various case management orders, including under paragraph 9 obliging the claimant to write in with details of any application to amend he may make, and paragraph 14 obliging him to provide information about the disclosures he relies on for his automatic unfair dismissal claim. In both instances, the claimant was to provide information by 8 November 2022. EJ Webster also listed a Preliminary Hearing on 13 February 2023 to consider any application to amend the claimant may make.
2. The claimant did not comply with these orders, and on 29 November 2022, EJ Wright issued a strike out warning on its own initiative and having considered representations from the parties, because the claimant had not complied with the Order dated 11 October 2022, and the claim had not been actively pursued.

3. Nothing further was received from the claimant, and the respondent made an application to strike out the claimant's claims on 29 December 2022 on the same grounds as EJ Wright's strike out warning.
4. On 9 December 2022 EJ Perry issued instructions that the tribunal would consider whether to strike out the claimant's claim that the hearing on 13 February 2023.
5. On 9 February 2023 the claimant emailed the tribunal indicating that he did not propose to apply to amend his claim, and he provided information about the protected disclosures he sought to rely on.

#### Parties' submissions

6. Before me Ms Barlay submitted that the claimant had ample time to comply with EJ Webster's orders, he should have complied with them, and his explanation about his child sickness did not cover the whole period in which he could have provided the information he had been ordered to provide. She submitted that the respondent was prejudiced in that it did not know the case it had to meet until the claimant provided his email of 9 February 2023.
7. Mr Betchley pointed out that the claimant was a litigant in person. He accepted that the claimant ought to have complied with the orders and had no excuse. However, his child, who has a number of health issues, was sick during at least part of the relevant period. He submitted that the hearing in early May can still go ahead, and that the case management orders can get back on track. He submitted that there was a less Draconian way forward and striking out the claimant's claims. He said he had discussed matters with the claimant, who is now under no illusion about how important it is to comply with tribunal orders, and said that it may be the case that unless orders would be appropriate in respect of varied case management orders.

#### The law

##### 8. Rule 37

*(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—*

*(c) for non-compliance with any of these Rules or with an order of the Tribunal;*

*(d) that it has not been actively pursued.*

9. Even if the grounds for strike out are made out, the tribunal must still exercise its discretion as to whether in fact to strike out the claim or response. This discretion should not be exercised if there is a less drastic means to the end for which strike out exists. The tribunal should take into account relevant factors, which include the magnitude of the default, the prejudiced that accrues to the other party and whether a fair hearing is still possible.

Conclusions

10. The claimant has breached the orders of the tribunal by not providing information in respect of any proposed amendment, and by failing to provide information about his protected disclosures. These are serious defaults which have inconvenienced the respondent and affected the case preparation of the matter.
11. However, the respondent submitted that it had been prejudiced in not knowing the claim it had to meet until 9 February 2023. Mr Betchley submitted that, effectively, the case could be brought back on track and a fair hearing was still possible. Ms Barlay did not submit otherwise in her reply to Mr Betchley's submissions.
12. I find that there is a less drastic way forward than strike out and that a fair hearing is still possible. This will involve varying the case management orders and obliging the parties to work very quickly to ensure the matter is ready for a final hearing. The claimant's obligations in the case management orders, I considered that it was appropriate to attach Unless Orders to his obligations in respect of disclosure and exchanging his witness statements. I have dealt with case management orders in a separate document.

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Employment Judge **Heath**

Date 13 February 2023\_\_\_\_\_