



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4108520/2021

Consideration on written documents on 28 July 2021

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Employment Judge A Kemp

Mr S Napier

**Claimant
In person**

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Kier Limited

**Respondent
Represented by
Ms A Orr
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claim is struck out under Rule 37 as the claimant has not complied with an Order from the Tribunal

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REASONS

Background

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1. There was a Preliminary Hearing for the purposes of case management on 18 June 2021. In the Orders issued in the Note following that Hearing the claimant was required to set out Further and Better Particulars of his Claim. The claimant in the Claim Form had ticked the box for unfair dismissal, but does not have the necessary two years of continuous service to make such a claim where that is for unfair dismissal under section 94 of the Employment Rights Act 1996.

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E.T. Z4 (WR)

2. The claimant indicated at the Preliminary Hearing that he had conducted research into the issue, and that he intended to make a claim in relation to health and safety matters. He was given until 16 July 2021 to do so by the order. He did not however do that.
- 5 3. By email dated 20 July 2021 the claimant was informed that the Judge was considering striking out his claim under Rule 37 for his failure to do so, and he was given 7 days to respond. He did not do so.

The Law

4. A Tribunal is required to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

“2 Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- 20 (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

25 A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

30 (i) *Strike out*

5. Rule 37 provides as follows:

“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—

5(c) for non-compliance with....an order of the Tribunal.....”

6. The EAT held that the striking out process requires a two-stage test in *HM Prison Service v Dolby [2003] IRLR 694*, and in *Hassan v Tesco Stores Ltd UKEAT/0098/16*. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the
10 second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim. In *Hassan* Lady Wise stated that the second stage is important as it is 'a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit' (paragraph 19).

15 **Discussion**

7. The claimant has not provided any basis for a claim that is competently before the Employment Tribunal, despite having had that opportunity following the Preliminary Hearing, and from the email sent to him latterly. In the absence of any response I consider that it is in accordance with the
20 overriding objective to strike out the claim, and I have provided for that in the Judgment above.

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30	Employment Judge:	A Kemp
	Date of Judgment:	30 July 2021
	Date sent to parties:	02 August 2021