



# THE EMPLOYMENT TRIBUNALS

**Claimant** Mr M Darghouth  
**Respondent** Stephenson Hotel Limited  
**Heard at** Newcastle upon Tyne Hearing Centre  
**On** 17 January 2022  
**Before Members** Employment Judge Langridge  
Mr R Dawson  
Ms D Newey

## Representation:

**Claimant** Mr D Robson, solicitor  
**Respondent** Miss R Page, solicitor

## JUDGMENT

### Rule 37 Employment Tribunal Rules of Procedure 2013

- (1) The respondent's application to strike out the claimant's claim is refused.
- (2) The claimant's application to strike out the respondent's response is refused.

## REASONS

1. The final hearing of this discrimination claim was listed to take place over 4 days between 17-20 January 2022, having previously been postponed by the Tribunal in April 2021. Case management orders were made on 2 September 2020. On 24 December 2021 the respondent applied to strike out the claim under Rule 37(1)(c) on the grounds that the claimant had not complied with any orders, later adding grounds under Rule 37(1)(b) relating to unreasonable conduct of the proceedings. In making its submissions today, the respondent relied also on Rule 37(1)(e) and asserted that it was no longer possible to have a fair hearing.
2. The claimant made his own strike out application orally on the morning of this hearing, in response to the fact that the respondent had made such an application.

The grounds mirrored those set out in the respondent's written submissions, and so both parties ended up relying on Rules 37(1)(b), (c) & (e), non-compliance with orders being the main issue. Neither party identified any prejudice in support of the argument that it was no longer possible to have a fair trial.

3. The claimant did not comply with any case management order until very recently, and only after intervention by the Tribunal, which included the making of an unless order. For its part, the respondent did not comply in time with any orders, sending a list of documents in March 2021, four months late, and not supplying copy documents until November 2021, 11 months after the original order. Witness statements were never provided by the respondent, despite the Tribunal ordering exchange by 13 December 2021. The claimant's statements were sent to the respondent that day but were not produced at this hearing in readiness to proceed subject to the strike out application.
4. In breach of the Tribunal's orders, the respondent also prepared no paginated bundle for the final hearing. It claimed to be unable to finalise its witness statements or the bundle in the absence of disclosure of the claimant's documents, which were only just received. In fact, the scope and number of these documents was extremely limited. In any event, the lack of disclosure by the claimant in no way excused the respondent's lack of preparation.
5. There was therefore an almost complete lack of any proactive effort by the parties' representatives to prepare this case for hearing over a protracted period of time. Excuses were offered but no proper explanation for the non-compliance was put forward. There was no merit in either of the applications to strike out the claim or response, especially in circumstances where the parties themselves were not responsible for the defaults. The Tribunal unanimously agreed to refuse both applications and made orders postponing the hearing to allow the case to be properly prepared and determined on its merits.

**Employment Judge Langridge**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON**

10 February 2022

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