



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Khalid Butt

**Respondent:** Europackaging Limited

**Heard at:** Birmingham (by CVP video hearing) **On:** 06 March 2024

**Before:** Employment Judge Hena

## Representation

Claimant: None Attendance

Respondent: Ms Barney, Counsel, Ms Z Shah, Instructing Solicitor

# JUDGMENT

## The Tribunal makes the following findings:

1. Pursuant to Rule 47 of the Employment Tribunals Rules of Procedure 2013 the hearing on the 6 March 2024 could proceed in absence of the claimant attending on the basis the Tribunal was satisfied the claimant received notice of hearing, he confirmed receipt to the respondent on 29 February 2024 during a telephone call, the Tribunal phoned the claimant 3 times and sent an email on 6 March 2024 to assist him in attending the hearing.
2. The claim is struck out in its entirety pursuant to Rule 37 of the Tribunal Rules of Procedure.

# WRITTEN REASONS

1. The Tribunal listed the matter for a Public Preliminary Hearing on 06 March 2024 on the 9 November 2023 to consider the claimant's strike out/deposit order application and to case manage the matter to final hearing if necessary. The Tribunal was unable to do any case management on 9 November 2023 as the claimant had forgotten about the hearing and was at work and could not engage with the issues.
2. The Tribunal sent the claimant a Strike Out Warning on 10 November 2023 with regards to his claim unfair dismissal as he did not have a required length of service and gave him until 24 November 2023 to object to its dismissal. The claimant made no objections.
3. The claimant failed to comply with the case management Order of 9 November 2023 by providing a schedule of loss and particulars of claims by 8 December 2023. No reason as to non-compliance was provided by the claimant to the Tribunal and/or the respondent.
4. On the 22 January 2024 the respondent made an application for Strike Out which set out that the claimant had failed to comply with the Order of 9 November 2023. There were further emails from the respondent to the Tribunal and the claimant about his non-compliance on 9 February and 22 February 2024.
5. The respondent at the hearing set out that the instructing solicitors had successfully phoned the claimant on 29 February 2024 where he confirmed notice of the hearing on 6 March 2024 and set out his intention to pursue all of his claims. He provided no explanation as to his non-compliance of the Order of 9 November 2023.
6. The claimant provided no explanation as to why he was unable to attend the hearing on 6 March 2024 nor for his non-compliance in actively pursuing his claims.
7. The claimant's claim is struck out, after carefully considering the cases relied upon by the respondent of *Rolls Royce plc v Riddle* [2008] IRLR 873 and *Balls v Downham Market High School & College* [2011] IRLR 217 on the basis of the following:
  - the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious;
  - it has not been actively pursued.

- it is no longer possible to have a fair hearing of the claim, because the claimant refuses to engage with the respondent on the Tribunal in order for his application to be determined.
8. In accordance with the case law the Tribunal balanced the seriousness of striking out a claim with the consideration of whether the claimant had actively pursued his claim, reasonableness and the fairness in failing to do so.
  9. Given the history of the matter this was the second hearing the claimant had not attended, with the Tribunal calling the claimant for the case management hearing and him informing the Tribunal he had forgotten about it and only had a few minutes for the hearing. Of note is that the first call the Tribunal made to the claimant was on 6 March 2023 at 10:12 a.m. he answered and asked who was calling, when he was told it was the Tribunal the call was disconnected. An email and a further two calls were made 30 minutes later which were not responded to.
  10. This combined with the claimant's lack of compliance with the Order of the 9 November 2023, which he has failed to explain, despite having the opportunity to do so. Means he has failed to act reasonably and has made no efforts to pursue his claims, which have not been properly particularised.

#### *Other Matters*

11. The respondent indicated their intention to make an application for costs against the claimant, noting that notice needed to be provided to the claimant before the Tribunal can consider their application.
12. The Tribunal requested an application be made by the respondent before the matter could be listed for a costs hearing.

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*Employment Judge Hena*

06 March 2024

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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