



## EMPLOYMENT TRIBUNALS

**Claimant** Mr M Dogantekin

**Respondent** Apple Central Taxis Ltd

**Heard at:** Southampton (by video)  
**Before:** Employment Judge Hogarth

**On:** 8 October 2024

### Appearances

For the claimant: The claimant did not appear and was not represented  
For the respondent: Ms McKenzie, representative (Peninsula)

## JUDGMENT

1. The Claimant's claims are struck out under Rule 37(1)(c) and (d) of the Employment Tribunals Rules of Procedure 2013.
2. In the alternative, the claims are dismissed under Rule 47 of those Rules.

## REASONS

### Background

1. By a claim form dated 28 November 2023, the claimant claims to have been employed by the respondent as a "taxi driver" between 1 September 2021 and 2 November 2023. He ticked the boxes to indicate he is claiming for all the following: (a) unfair dismissal; (b) discrimination on the grounds of race and/or religion or belief; (c) detriment on the grounds of public interest disclosure; (d) redundancy pay; (e) breach of contract (relating to notice); (f) unlawful deductions from wages; (g) accrued but unpaid holiday pay; and (h) other payments.
2. Some of the limited information given in box 8.2 is difficult to understand: for example, the claimant alleges that the respondent manipulated Exeter City Council, but does not indicate what this means or how it relates to his claims. Very few details are given about the factual basis of the claims: he says he had a small incident with one person and the respondent stopped him working without any "big reason", that there is no other person in Exeter he can work with, and that the respondent stopped him working at Exeter Airport. His form does not indicate why his alleged dismissal was unfair. He does not identify his race or religion/belief or what happened because of those characteristics to constitute discrimination. He does not identify any public interest



disclosures he made or what detriments he was subjected to because of them. And there is no information about the sums he says are due to him under his other claims or why he is entitled to them.

3. The respondent denies all the claims. Its response states that the claimant was a self-employed taxi driver and that it cannot defend the claims without further particulars of them. During today's hearing Mr Hockey explained that the respondent's position was that the claimant worked on a self-employed basis as a private hire vehicle driver (i.e. as a minicab driver, not as a hackney carriage or taxi driver) and that following an assault on a local taxi driver Exeter City Council revoked his PHV licence. This meant that it was unlawful for the respondent, as a licenced PHV operator, to offer private hire jobs to the respondent as an unlicensed driver.
4. I make no findings today as to the substance of the claims or the response.
5. Today's hearing was listed by Employment Judge Gray at a telephone case management hearing on 5 June 2024 at which neither party appeared. EJ Gray ordered the parties to each write to the Tribunal, by 19 June 2024, with an explanation as to why they did not attend the hearing. He also ordered the claimant to confirm that he does still pursue the claim and the respondent to confirm it does still defend it.
6. The only communication from the claimant received by the Tribunal before EJ Gray made his case management orders was an email sent at 10.17 on 5 June to the respondent, copied to the Tribunal. This email is set out in EJ Gray's Case Summary. It did not say anything relevant about the proceedings as such, but it does suggest that the claimant was hoping to get some money from the respondent.
7. An email sent by the Tribunal to the parties on 12 June enclosed EJ Gray's case management orders, drew their attention to the order for an explanation of non-attendance before 19 June, reminded them about the hearing listed for today and asked them to fill in the attendance form for the hearing.
8. Apart from the copy email mentioned in paragraph 6 above, the claimant has not contacted the Tribunal since the claim form was submitted, whether in response to Tribunal orders or otherwise.
9. Yemah Barlay (from Peninsula) complied with EJ Gray's order for the respondent to explain the respondent's non-appearance, by sending an email to the Tribunal on 17 June saying that she and her client were ready to attend the hearing but had not been able to obtain the necessary log-in details from the Tribunal on the day before the hearing or on the day of the hearing.
10. The claimant has not offered any explanation for his non-attendance on 5 June and has not confirmed that he wishes to pursue his claims. So, I do not know why he did not attend or, indeed, whether he does wish to pursue all or any of them. In view of the respondent's explanation, it must be possible that he did not have the log-on details. But he was notified of the hearing and was reminded of it in the email mentioned in



paragraph 7 above. Unlike the respondent, he made no contact with the Tribunal about the case management hearing before 5 June, on the day, or subsequently.

11. EJ Gray's case management orders included directions for today's hearing. The parties were ordered (a) to log on by 9.30 am in anticipation of the hearing starting at 10.00 am, (b) to agree a set of documents for use at the hearing not less than 28 days before the hearing date (c) to exchange witness statements no later than 14 days before that date, and (d) to send the set of documents and witness statements to the Tribunal by 4 pm two working days before that date.
12. Ms McKenzie told me that Peninsula attempted to communicate with the claimant on various occasions, starting on 29 August, in order to secure compliance with EJ Gray's case management orders. They used email, but only had one response from the claimant, an email sent to them on Friday 4 October at 3.22 pm. She said she had asked him about documents for the bundle in advance of the deadline for sending it to the Tribunal, but his only response was to ask whether he had won and what money he might receive. She said she replied to explain that she was the respondent's representative and that she was preparing for the hearing today.
13. Ms McKenzie also told me that the claimant was copied into the joining instructions for today's hearing, using the same email address for him.
14. It can be seen from the above that the claimant has not engaged with the Tribunal proceedings at all since he presented his claim form in November 2023.

### **The hearing**

15. The purpose of this video hearing was (a) to determine the employment status of the claimant (specifically whether he was an employee or worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996 or an employee within the meaning of section 83 of the Equality Act 2010); (b) to confirm the issues with the parties; and (c) to deal with case management to progress the matter to final determination. Item (b) refers to matters which should have been dealt with at the telephone hearing on 5 June, including establishing which claims the claimant wants to pursue and the factual allegations on which they are based.
16. I was supplied before the hearing with a 61-page hearing bundle prepared by the respondent. Ms McKenzie explained that the bundle was not agreed because the claimant had not responded to her emails asking him for documents he wished to include. He had been sent the bundle in advance of the hearing. I also had written submissions from Ms McKenzie (also sent to the claimant), which (a) set out her reasons for saying the claimant was not an employee, but was instead self-employed, and (b) invited me to strike out the claims under rule 37(1)(c) and (d) owing to the claimant's failure to comply with any Tribunal orders and/or to actively pursue his claims. She referred to his failure to write to the Tribunal to give an explanation for non-attendance on 5 June, his failure to provide documents for the hearing bundle and to agree its contents, and his failure to make and exchange witness statements. I note



that in addition to those matters, the claimant also failed to state whether he wished to continue to pursue all his claims.

17. The respondent appeared through the attendance of Ms McKenzie as its representative, Mr Graham Hockey (general manager) and Mr Wayne Michaels (area manager). Mr Hockey and Mr Michaels had produced witness statements and were expecting to be called as witnesses, had we got to the point of determining the claimant's employment status.
18. The claimant did not attend the hearing, without giving any explanation. The Tribunal clerk attempted to contact the claimant by telephone and email with no response. The telephone number provided by the claimant on his ET1 form did not produce a dialing tone. Mr Hockey told me he had used the same number previously to contact the claimant. The claimant's email address was active as he used it to send an email to the respondent's representatives on 4 October.
19. The Tribunal clerk also confirmed with Bristol ET staff that the claimant had not contacted them during or prior to the hearing.
20. In these circumstances, Ms McKenzie invited me to strike out the claims. She referred to her written submissions referring to strike out under Rule 37(1)(c) and (d) and also the claimant's failure to attend the hearing or to communicate with the Tribunal about it. In the discussion that followed the possibility of dismissing the claims under Rule 47 was also considered.

### **The applicable law**

21. Rule 37 provides that at any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of a claim on any of the grounds listed in paragraph (1). In this case the relevant grounds are sub-paragraph (c), (that the party has not complied with any of the Rules or with an order of the Tribunal) and (d) (that the claim has not been actively pursued). I note that there is considerable overlap between those grounds and between those grounds and sub-paragraph (b) (conducting the proceedings in an unreasonable manner), but I consider it sufficient for present purposes to consider the grounds in sub-paragraphs (c) and (d), Rule 37(2) requires the claimant to be given a reasonable opportunity to make representations, before an order striking out claims is made.
22. The case law relating to Rule 37 makes clear that a decision to exercise the power to strike out a claim is a two-stage process. The Tribunal must first determine that it is open to it to strike out a claim on one or more of the listed grounds and then it must determine whether to exercise the power. Strike out is a serious and draconian step for a tribunal to take, and the Tribunal must consider all the circumstances before deciding to strike out a party's claims.
23. In the case of strike-out under rule 37(1)(c), the Tribunal must consider, among other things, whether that is a proportionate response to the non-compliance. That requires the Tribunal to consider, in the light of the extent and magnitude of the non-



compliance, whether there is a less draconian means available to address the failures of the Claimant and achieve a fair hearing. In the case of rule 37(1)(d) it is also important for the Tribunal to consider all the circumstances and the proportionality of striking out the claims.

24. Rule 47 makes specific provision about non-attendance at a hearing. It provides that if a party fails to attend or to be represented, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence. So Rule 47 confers a power exercisable when a party fails to attend a hearing, only to be exercised after considering that information, and any other relevant circumstances, including proportionality.

## Conclusions

### *My decisions*

25. I decided at the end of the hearing to strike out all of the claims in these proceedings on the grounds mentioned in Rule 37(1)(c) and (d). I also decided, in the alternative, to dismiss the claims under Rule 47. Each of those Rules provided a clear and sufficient basis for bringing these proceedings to an end. My reasons for making those decisions are as follows.

### *The respondent's application to strike out the claims*

26. In relation to strike out, I considered that both grounds relied on by the respondent had been made out for the reasons set out in paragraphs 27 to 31 below and that it was right to exercise the power to strike out the claims. In my view the claimant has had a reasonable opportunity to make representations at today's hearing but failed to take advantage of this by attending.

### *Rule 37(1)(c)*

27. The claimant has not complied with any of the orders made by the Tribunal in this case (as described above), and he did not attend today's hearing, which is also a failure to comply with the order to attend. He has plainly not complied with his duty under Rule 2 to assist the Tribunal in furthering the overriding objective and to co-operate with the respondent and the Tribunal. So the position in relation to Rule 37(1)(c) is clear: there has been a wholesale failure to attempt to comply with the Tribunal's orders and with Rule 2, a failure that appears to me to be a wilful and deliberate flouting of them rather than a lack of diligence or understanding. There has been no attempt to explain any failures or to remedy them. The claimant has simply presented a short claim form which cries out for further information and then done nothing.
28. I concluded that the claimant's failures to comply with the Tribunal's orders and with Rule 2, taken together, are of a magnitude and extent that is very much at the more serious end of the scale. I reach this conclusion because:
- (1) Parties are expected to comply with Tribunal orders and, if there are problems, to communicate with the Tribunal about them. The claimant has simply failed to communicate with the Tribunal since November 2023 and



he has not even stated (as ordered by EJ Gray on 5 June) whether he wishes to continue to pursue his claims.

- (2) As a result of the claimant's non-compliance, the case is no nearer to being ready for listing for a final hearing than it was on 5 June, over four months later. None of the issues for determination at today's hearing have been resolved, meaning there would need to be one or more further preliminary hearings before the case could be ready for a final hearing. That would take up more Tribunal sitting time as well as causing more delay, inconvenience and expense for the respondent.
- (3) The time of the Tribunal and the respondent's representatives has been wasted today and the respondent's representatives have had to waste time and incur costs since 29 August in trying to communicate with the claimant in connection with EJ Gray's case management orders and in preparing for today's hearing.
- (4) The respondent and the Tribunal still have virtually no information about the factual basis (if any) of the specific claims made in November 2023. Since then, the continuing delay in getting to a point where the respondent can understand what specific claims it has to meet has had a significant and unreasonable impact on the respondent. In addition to the wasted time referred to above, it has had to consider and respond to all the claims, and it has been unable to consider whether there is any basis to consider settlement or, perhaps, to apply for any of the claims to be struck out as having no reasonable prospect of success. I note that if the claimant had complied with the Rules and the Tribunal's orders, there is a good chance that by now some of the claims would have been abandoned. The others would have been clarified. The net result would be likely to narrow the issues to which the respondent would then be able to respond properly.

29. In my view that conclusion made it right, having regard to the overriding objective, to strike out the claims. I considered that to be a proportionate response to the claimant's failures to comply.

*Rule 37(1)(d)*

30. The claimant has not actively pursued his claims at any time since submitting his claim form on 28 November 2023. As explained above, he has not been in direct contact with the Tribunal or done any of the things a claimant is expected to do to progress his claims: he has not in fact pursued his claims at all, actively or otherwise. Neither the short email the Tribunal was copied into on 5 June nor the email sent to the respondent on Friday 4 October indicate any intention on the claimant's part to engage with the Tribunal processes.

31. I concluded that the claimant's failure to pursue his claims is a very serious matter, for similar reasons to those mentioned in paragraph 28 above: a claimant is expected to be active in pursuing claims that have been presented, and a failure to do so leads to delay and other problems for the Tribunal and the respondent. I considered it right, in all the circumstances and in the light of the overriding objective, to exercise the power under Rule 37(1)(d) to dismiss the claims. That was in my view a proportionate response to the claimant's failure. I should add that nothing in the hearing bundle or



that I heard at the hearing gave me any reason to think that the claimant's attitude to active participation in the proceedings is likely to change if his claims were to be allowed to proceed.

*Dismissal under Rule 47*

32. As the claimant failed to attend today's hearing the pre-condition for exercising the power under Rule 47(1) to dismiss the claims (which has the same practical effect as striking them out) was satisfied. As for Rule 47(2), there was no information available to me as to why the claimant failed to attend, because the claimant had not been in contact with the Tribunal about the hearing or any difficulty he had in attending and he did not respond to the Tribunal clerk's attempts to contact him shortly before and during the hearing. Those failures are entirely in line with the claimant's previous failure to actively pursue his claims.
33. I concluded that the failure to attend was serious for the same reasons as are set out in paragraph 28(2) to (4) above. The claimant's failure to contact the Tribunal about his non-attendance at any stage before, during or after the hearing and his failure to respond to the Tribunal clerk's phone calls and emails shortly before and during the hearing, were aggravating factors. In all the circumstances I considered the right, and proportionate, response to the claimant's non-attendance was to dismiss his claims. I did not consider that any other decision that would allow the proceedings to continue would be an adequate response and, in addition, I had no reason to think that the claimant's attitude to active participation in the proceedings was likely to change.
34. The consequence of my decisions is that these proceedings are now at an end.

Employment Judge Hogarth  
8 October 2024

Sent to the parties on  
24 October 2024 By Mr J McCormick

For the Tribunal