



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MARTIN  
**MEMBERS:** Ms Christofi  
Mr Maw

**BETWEEN:**

Mrs S Callan	Claimant
AND	
Rohm (GB) Limited	Respondent

**ON:** 8 October 2018

**APPEARANCES:**

**For the Claimant:** did not attend

**For the Respondent:** Ms Leonard – Counsel

**JUDGMENT**

The unanimous judgment of the Tribunal is that the Claimant's claims are struck out

**REASONS**

1. On 17 November 2017 following a telephone preliminary hearing with Employment Judge Tsamados, this matter was listed for a 6-day hearing commencing on 8 October 2018. At that hearing directions were given for the conduct of this matter including that the Claimant must provide additional information of her claims as her claims were not clear and the usual case management orders for disclosure, bundles and witness statements.
2. The Claimant did not attend this hearing and in advance of the hearing (as set out in the chronology below) the Respondent made an application that her claim be struck out in the basis that she had not complied with orders for disclosure, agreement of the bundle, or the provision of witness statements and

consequently a fair trial was not possible. That application was made by the Respondent on 10 August 2018 by email and the Claimant was copied into the application. The Claimant provided her response to the application in writing on 29 August 2018.

3. In her objection to the Respondent's application the Claimant sought to place the blame for her non-compliance on the Tribunal and on the Respondent. She stated that her representative ceased to act on her behalf as from 29 May 2018. However the notice stating that her representative had ceased was not sent to the Tribunal until 10 August 2018. Significantly, the Claimant says in the objections that 'If the Respondent wishes to proceed with its application for a strike out ..... the application should only be heard after the Tribunal has had the opportunity to hear evidence from the parties and witness at the substantive hearing". The Claimant did not attend to explain why she had not complied with the orders. There tacit acceptance in this document that the Claimant had not complied with the orders.
4. The Tribunal delayed the start of the hearing until 10.20 to see if the Claimant attended. She did not attend and did not contact the Tribunal to say she was not attending. The Claimant had previously asked for an interpreter and an interpreter had been booked and attended for the hearing. This is despite the Claimant's own particulars of claim saying that she had good English, went to a UK university and spoke English at home. It appears that there was no need for an interpreter to be booked in the first place and as the Claimant had not notified the Tribunal she was not attending the Tribunal service incurred the costs of the interpreter for two days (as 24 hours' notice of cancellation is required).
5. Ms Leonard on behalf of the Claimant told the Tribunal about the lengths that the Respondent had gone to, to engage with the Claimant for the preparation for this hearing. The Respondent explained that in June 2018 it applied for an unless order on the Claimant's failure to comply with orders, but this was not addressed by the Tribunal. It's application then changed to an application to strike out given the proximity of the hearing date and the Claimant's continued non-compliance. The Respondent, despite not being entirely clear what the Claimant's claims were, had drafted witness statements in accordance with the Tribunal orders and were ready to exchange them, but were unable to contact the Claimant. The Claimant would not liaise about the contents of the bundle and therefore the Respondent prepared a draft bundle and sent it, as ordered, to the Claimant by email saying that if she wanted a hard copy she should provide the Respondent with an address. No response was received.
6. Ms Leonard submitted that at the preliminary hearing in November 2017 and the subsequent order made it clear what the date was for the Tribunal and indeed the Respondent's supplication also makes the date clear. clear dates for trial, discussed in hearing and order. It was submitted that even if the Claimant had difficulties subsequently, she knew the date of the hearing.
7. The Respondent submitted that it had tried to progress this matter by making

an application for an unless order, then as this was not dealt with applied for strike out. Given the Claimant sent a response to the Respondent's application she was aware of the application and the date of this hearing. It is now impossible to see how her claims could succeed as there had been a complete lack of engagement showing disregard for the Tribunal and Respondent and allowing considerable costs to be incurred.

8. Finally, the Respondent submitted that many of allegations concern financial impropriety against the directors which would have serious implications if findings of fact were made against them with serious consequences. It was unpalatable for them to defend the case in the face of no evidence or witness evidence from the Claimant.
9. In coming to its decision, the Tribunal considered the application and submissions by the Respondent and the Claimant's written submissions. In those submissions the Claimant referred to various cases some of which are addressed below:

9.1 *Ezsias v North Glamorgan NHS Trust* [2007] 4 All ER 940 submitting that there is a very substantial hurdle to cross for strike out to be ordered, depriving an individual of an opportunity to present a case in full is a draconian step. In terms, therefore, any prospect of success which is not 'merely fanciful' is sufficient for the Tribunal to refuse to strike out. This application is however not based on whether the Claimant's claim has a reasonable prospect of success but rather her failure to comply with Tribunal orders.

9.2 *Carla Bennett v London Borough of Southwark* [2006] ICR 1537, submitting that the Tribunal must have regard to the overriding objective of seeking to deal with cases fairly and justly and must consider the magnitude of the non-compliance, whether the failure was the responsibility of the party or his or her representative, the extent to which the failure causes unfairness, disruption or prejudice, whether a fair trial is possible and the availability of other sanctions. The Claimant submitted that there is nothing automatic about a decision to strike out and such orders are not punitive.

9.3 *Bolch v Chapman* submitting that there must be a finding that a party is in default of some kind and if so whether a fair trial is possible, and whether strike out is a proportionate sanction or whether there may be a lesser sanction that can be imposed.

9.4 *James v Blockbuster Entertainment Ltd* [2006] IRLR 630 submitting that strike out is of a draconian nature and should not be readily exercised and whether the sanction of strike out is a proportionate response in the particular circumstances of the case.

9.5 The Claimant's submissions also address other cases all of which were considered by the Tribunal in coming to its decision.

10. The Tribunal finds that the Claimant is in serious default of the Tribunal orders

made by Judge Tsamados on 17 November 2017 such that even if the Claimant had attended this hearing, the hearing could not proceed. The Claimant has failed without good cause to disclose documents, engage in the preparation of the bundle, provide a witness statement and to co-operate with the Respondent in the preparation for this hearing. The Tribunal accepts that there was delay on its part in dealing with the Respondent's applications, but this does not absolve the Claimant from her responsibility in complying with the orders and co-operating in the preparation for this hearing.

11. The Respondent's application is not predicated on the strength of the Claimant's case, it is made on the basis of her refusal to comply with orders and failure to engage with them to prepare for this hearing. The Claimant's default is very serious and has made a hearing impossible at this time. The Claimant has not asked for a postponement of this hearing and has not attended to explain her default. She has incurred the Tribunal in unnecessary costs in booking an interpreter, which was not required in the first place and not required as she did not attend. This is unreasonable behaviour.
12. As the Respondent submitted the Claimant has made very serious and unsubstantiated allegations against the directors of the Respondent which could have serious repercussions for them if findings of fact were made. If this hearing was to be relisted, it would not be listed until the end of 2019 or more likely for 2020. It is not in the interests of justice for the Respondent's to have these allegations hanging over them for this length of time. The inability to hold the hearing today falls entirely on the Claimant.
13. The relevant rule in the Employment Tribunal Rules of Procedure 2013 is rule 37.

**Striking out**

**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—**

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

**(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.**

14. The Tribunal is satisfied that the Claimant had the opportunity to make representations which she did in writing and had the opportunity to attend this hearing to make further oral submissions.
15. The Tribunal finds that the Claimant has failed to comply with the orders of the

Tribunal without a satisfactory explanation being given. Those failures have led to this hearing not being effective. The Tribunal notes that apart from the Claimant's response to the application to strike her claim out, she has not actively pursued her claim. She has failed to comply with orders which would have enabled her claim to be heard, she has failed to communicate with the Respondent about the preparation for this hearing. She failed to notify the Tribunal she would not be attending thereby meaning the interpreter she requested attended unnecessarily which the Tribunal sees as unreasonable behaviour.

16. The Tribunal is mindful that strike out is a draconian sanction which should only be used in exceptional cases. The Tribunal however finds this to be one of those cases where strike out is the appropriate sanction. The Claimant's continued failure to comply with orders leading to the six-day hearing being ineffective is entirely due to her failure to engage with the process, comply with orders or actively pursue her claim. It would not be in the interests of justice to postpone this hearing to another date, especially given the current listing of late 2019 or most likely 2020. Therefore, the Tribunal strikes out the Claimant's claim.
17. The Respondent made an application for costs pursuant to rule 76 Employment Tribunal Rules of Procedure.

**When a costs order or a preparation time order may or shall be made**

76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

18. The Respondent's application is limited to Counsels fees for today in the sum of £1,500. The Respondent submitted that simply failing to turn up is sufficient to engage the costs jurisdiction, but the Claimant's actions go far beyond that. The Claimant was a financial director for 11 years and is well educated and she must know that considerable costs have been incurred by the Respondent. The Respondent emailed her the bundle and made numerous attempts to contact her. It was submitted that the Claimant has shown flagrant disregard to the Tribunal process and that costs may be ordered as a result.
19. The Tribunal is mindful that the Claimant has not been able to respond to the Respondent's application for costs and not been given the opportunity to give evidence as to her means. The Tribunal has therefore granted the Respondent's application for costs in the sum of £1,500 on the basis that the

Claimant's conduct of the proceedings has been unreasonable. As the Claimant was not in attendance for the costs application she has 14 days liberty to apply in relation to the costs order within 14 days of this order being sent to the parties.

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Employment Judge Martin  
Date: 8 October 2018