

IN THE EMPLOYMENT TRIBUNAL OF GIBRALTAR

Claim 41 of 2023

BETWEEN:

ANDREW MASTERS

Claimant

- and -

CRUCIAL COMPLIANCE LIMITED

Respondent

Mr. Tom Hillman for the Claimant

Mr Guy Stagnetto KC with Ms Gabrielle O'Hagan for the Respondent

REASONS

Thursday 19th day March 2026
Mr Stephen Bossino - Chairman

IN PUBLIC

1. I am going to give an ex tempore judgment with essential reasons¹, to deal with this matter as soon as possible and so that the parties know where they stand today.
2. Mr Masters thank you for turning up today, taking the stand, and trying to explain your case to us. I do not know who you are, I do not know your background, and I do not know you from before. I can only know you from the papers that I have before me and the evidence that you have given before me.
3. It seems to me that when you were dismissed, from what you say in paragraph 3 of your Witness Statement, that since your dismissal you had actively sought and secured alternative employment and the truth is, I hope nobody minds me saying this, but it seems that you are a high flyer in what you do and a high earner. That is borne out your by past experience with the Respondent and also the work that you have

¹ Rule 53(4) of the Employment Tribunal Rules.

done post your dismissal. So, in the context of the person that I am dealing with, you are in a different category.

4. I think you virtually accepted in your evidence that you understand now where you are and you have given me a reason why you say you were in this position, and that is a mistake that you made, a genuine mistake, because you thought you had to concentrate on getting your records and giving your records. I am afraid to tell you that I do not believe you and I do not believe you because the onus is on you to prove your case and establish cause against your claim being struck out. There is nothing to corroborate independently what you are saying other than your word and I suppose you cannot, in these circumstances, expect me to just take your word at face value and accept it, because I think you have been candid enough, when I asked you, that you understood what “earnings” meant. At that stage, the cat and mouse game was truly over because you knew that what you were being asked to do was to produce was your income and to support that with your records, and you know why.

5. You are nodding because I think the acknowledgement has to be that you understood the implications of what you were doing. You were declaring an income that you knew did not match the reality of your income. You knew that. We know that now, and we do not know because you voluntarily told us, we know through the intervention of a third party (like with Eversheds in the case of Mr Tobias) the matter was brought to light. Had that not been the case, you would have sat happily with that evidence, all the way through had nobody challenged you, when you were challenged the first time and your second reply was also rather unsatisfactory. When the strike out came, you found yourself in a huge difficulty because, it seems to me, that you were caught out on what you had undeclared and knew you had to declare.

6. It is rather sad that in a small Tribunal such as this, we should encounter this type of conduct. It is very serious conduct and you must know that because you are, ultimately, self-employed and a businessman. You know the real world and you started off with a claim of £120, 000-odd which you were seeing was slowly being chipped at as you went along, and now you find yourself before me with a claim which is virtually worth little or nothing, if allowed to proceed. You also have the prospect of a costs order against you for £25, 000.

7. I am not satisfied with your explanation that your lawyers failed you when they asked you to complete the Schedule of Earnings. They are very clear on what they did. They asked you for your income, your earnings, in paragraph 1 and supported with documentation. You did not do that. You simply concentrated on records, you say, documents you said, and those documents happened to be only your invoices, which you had either issued at some stage or were going to issue at that stage, to justify the sum that you had disclosed to us when, in reality, you would have known that your income was in your bank statements and that this was not just a case about legalities, this was about honesty and I think that you have to accept that you were not honest in that particular respect.

8. Now I am not saying this because I want to punish you for that. That is not my function. My function is a very different one which is to make sure that the people that come before me have a right to a fair trial, which I hope you have seen that I have tried to guarantee and you have come all the way to this Tribunal and given your version of events, whether it is accepted or not is a different issue, you have had your say and you have had your final say. It has not been an easy experience for you. I saw you struggling in the witness-box because you had a difficult position to field. I also had to guarantee the right of the other party before me in this Tribunal, as part of not only the right to a fair trial and as part of the common law, but also as a central part of the overriding objective of this Tribunal.

9. I did take care to make sure that in my last Case Management Order, I brought this to your specific attention. That was on the 19th of January 2026. I had serious misgivings at that stage about what was happening. There is a very good record, almost a contemporaneous record, of what has happened from the first Preliminary Hearing all the way until today. I am not going to recite all of that history, it is fully recorded in this bundle, and should it be required for appeal purposes, it is already available. I am simply going to concentrate on what my reasons are for not accepting your explanation. I think I have given you a fairly extensive explanation as to why I am not accepting the explanation that you have given. This was not an innocent mistake. You deliberately set out not to disclose your true income and that must fall on you and nobody else.

10. If we look at it in stages, the first disclosure would have likely reduced your case from £130, 000 to about £80, 000-odd and then by the time that you have disclosed, what you say, are your full earnings, you are virtually looking at a claim which is worthless. I am not satisfied that you did not know the consequences of that because if you had disclosed your income truthfully you would have seen gradually your claim decrease all time rather than your actual losses going up; they would have been going down all the time or be non-existent and, therefore, end up without a claim against the Respondent or a remedy, I should say.

11. I am satisfied that if you had a genuine right of action against your solicitors, you would have taken appropriate steps by this stage against them, either a complaint or letter before action or perhaps even to have considered disclosing the file or part of the file to the other side, but you have not chosen to do that, that was your choice not to do that. The onus is not on the Respondent to prove its case. The onus is on you. The suggestion that there is nothing to contradict you is, with respect, misguided. There is nothing to corroborate what you are saying other than your word and, as I told you, I am not satisfied that you have been candid and that your explanation is more of a face-saving exercise rather than anything else.

12. As I said, it is a very unfortunate position that you have put yourself in and if you feel aggrieved, well like Mr. Stagnetto says, you always have recourse against your former solicitors, if it is the case that they let you down as badly as you feel now they let you down. I think what has happened, or seems to have happened, is that

between the strike out application and Mr Hillman's good offices, you have been put in a position of hands up and as soon as possible. But had it not been for that, I am certain that that would not have happened.

13. I accept the submission of Mr. Stagnetto that if the first limb in **Bolch**² is not met, I do not have to go on to consider the second part of it, which is the risk of a fair trial being compromised. So looking at the authorities which I am bound to follow, I am satisfied that these proceedings have been conducted unreasonably and scandalously because knowing the reality of your income, you chose, as a voluntary decision, just to disclose your invoices, which you knew, or must have known, did not reflect your actual income. Let me come to the second stage, Mr. Stagnetto was quite right to say that there are two limbs in that - the first limb is that in the exceptional case, and if we take the reference at sub-paragraph 2 with the bottom paragraph, we know that these are exceptional cases, the court can if it is satisfied that the behaviour or the conduct of the proceedings has been "*wilful, deliberate or contumelious disobedience of the Order of a court*" then that can lead to straight debarring without considering the next stage which is whether a fair trial is possible or not.

14. It is, in my respectful view, one of those exceptional cases that this Tribunal does not, thankfully, normally come across. I think I said so, or words to that effect, in respect of what I was seeing at the case management stage and that, of itself, allows me to strike out your Claim form. Now, if I were to be wrong on that and this is an ordinary case, I still have to consider whether a fair trial is or is not possible. I think that Mr Hillman, quite rightly, conceded that he agreed with the submissions on that particular aspect of the law with Mr. Stagnetto and his overall address with respect to the legal provisions.

15. Is a fair trial possible or not? Again, in my respectful view, this is not possible because the Tribunal not only has a lingering doubt about it, but it is certain that the Claimant has put the Tribunal and the Respondent in such a position that there is a total lack of, or any possibility of, this matter proceeding any further because of his lack of candidness. Then I remind myself that this is not to punish this gentleman at all. The non-disclosure is so substantial, in the context of this case and to the remedy being sought, that it goes to the heart of what, Mr Masters, you came asking of this Tribunal in the first place.

16. At Paragraph 28 of your Claim form, two years ago, you said: "*I therefore seek compensation pursuant to my statutory right not to be unfairly and wrongfully dismissed to be determined by the Employment Tribunal.*" All you had to do was to be frank and honest with this Tribunal from day one and I have to say, like what is said in paragraph 55 (2) at the top of page 22 in **Bolch**, I think there has been a total breakdown in the confidence that this Tribunal can have in your good faith and honesty in these proceedings, such as I consider that it amounts to an abuse of my process.

² **Bolch v Chipman** UKEAT/1149/02 & EAT/1150/02 TM

17. This is not the end of the matter. I have to consider: what is the appropriate remedy, which is proportionate to its conclusion? My conclusion has been one of wilful and contumelious conduct, I have to strike it out as an abuse of process, but even if I am wrong on that, what possible remedy could this Tribunal consider is appropriate? I have not been addressed by either party as to what may or may not be an appropriate remedy other than, perhaps, impliedly that the case might be allowed to proceed. As **Boltch**³ says: *"It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgment seat (in the words of Millet J) may still be an appropriate penalty to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty."* I do not believe there is any other remedy in this case or relief.

18. I look at the overriding objective and I look at the costs that have been incurred just for today's hearing (£25, 000), the costs that would be incurred in relation to further disclosure of documentation, we just bring out the schedule which was submitted, quite helpfully, by the Respondent and which it has updated. I had at one stage contemplated allowing the whole thing to go to full hearing, but I was persuaded by the application from the Respondent, and Mr Hillman subsequently agreed, that I should stay that stage of the case in order to avoid the huge costs which are going to be incurred in the disclosure exercise. At Tab 17, there is at least another £15, 000 of anticipated costs at that stage - with an element of total mistrust that could well escalate even more.

19. Then the Final Hearing, one cannot be certain what other applications may or may not arise from that, there is a further anticipated costs of about £20, 000. So if we take the full costs of today, £25, 000 if I am not mistaken, plus envisaged costs, and bearing in mind the remedy that you may or may not get, and let us put your chances of success of getting a judgment of unfair dismissal at 50:50, the odds on a commercial basis for you are non-existent, or money-wise, and so it would be a very bad business for you to carry on with this case any further in any event. It is as much for the Respondent's protection, as much as your own, not to throw good money after bad and for all those reasons I am going to strike out these proceedings and bring this matter to a conclusion.

20. If you are unhappy about my decision, the Supreme Court is just down the road a few steps away. You can file a Notice of Appeal, and you can argue this matter before a Supreme Court judge and that will also be your right to a fair trial, but with rights and rights to a fair trial also comes consequences. There is a misconception about this Tribunal, and that is that litigants and parties in general think that this is a cost-free environment, that one can come before a Tribunal judge, argue whatever one likes, disclose whatever one likes and there are no consequences whatsoever. That could not be further from the truth. It is the antithesis of the right to a fair trial and if the case

³ At paragraph 55(3) on page 22.

of *Nicholas Tobias*⁴ serves any purposes for today's hearing, they are the words of encouragement from senior court of appeal judges to people like us at first instance, not to doubt to exercise our powers when we are faced with cases such as this which developed before us.

21. And if there is one lesson to be learnt, that Gibraltar may be a small place, Gibraltar also has that tradition of the common law of England and Wales and its English judges. We may have different accents, we may have Spanish influence, but within us we have those principles that we apply in this jurisdiction under the Gibraltar Constitution, our own supreme law, which is what guarantees your right to a fair trial, what guarantees that I should be independent to you and to the other side and what guarantees that you have, as best as one is able to with the resources that we have, that you have the right to a fair trial and that those who are in the long waiting list do not have to wait for a remedy, in genuine cases, because my time is taken up in these sort of cases. I am sorry because I have not minced my words, but this is what I am here for; this is what the public interest requires; and, this is what this Tribunal stands for. I hope the message is loud and clear.

Stephen Bossino
CHAIRMAN

⁴ Arrow Nominees Inc. & Anr v Blackledge & Ors [2000] EWCA Civ 200