EMPLOYMENT TRIBUNALS

Claimant: Mr A Akabogu

Respondent: Notting Hill Genesis

JUDGMENT

The Claimant's application date 15 February 2022 for reconsideration of the judgment sent to the parties on 2 February 2022 is refused.

REASONS

1 There is no reasonable prospect of the original decision being varied or revoked.

2 The Claimant has applied for reconsideration of a Tribunal Judgement under Rule 71. The Respondent opposes the application for reconsideration. The only judgement which has been issued is a judgement under Rule 52 of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013. Rule 52 provides:

> *"where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgement dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless –*
> *(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such further claim and the Tribunal is satisfied that there would be legitimate reason for doing so, or*
> *(b) the Tribunal believes that to issue such judgement would not be in the interests of justice."*

3 The Claimant says that he simply forwarded to the Tribunal and the Respondent solicitors, an email and attachment which had been prepared for him by his pro bono Counsel, who was instructed to represent him at the Preliminary Hearing on 28 January 2022 and no more.

4 The email and attachment which were sent by the Claimant to the Tribunal on 27 January 2022, (i.e. the day before the Preliminary Hearing), were clear and

unequivocal. The email stated that the Claimant had legal representation at that time.

5 The Claimant refers to his physical and mental difficulties, but it is clear from his correspondence that he has the ability to understand straight forward concepts. The email and attachment he sent were so clear that he must have understood them to be withdrawing specific claims. The Claimant gives no explanation as to why he sent the email. Merely to suggest he did so because he was asked to, does not explain why he went ahead and did so, given their plain and obvious meaning. Additionally, the Claimant also sent to the Tribunal a document headed "Current Claims" on the same day which listed his claims and for each one that he was withdrawing it said in red capital letters "No longer pursuing". It is clear beyond doubt that the Claimant was aware of what he was doing when he withdrew his claims.

6 The Claimant's suggestion that in some way, his Counsel was in unauthorised negotiations with Respondent is of no relevance. A discussion between representatives about the legal issues and the preparation for the Preliminary Hearing would be the normal conduct of a case.

7 There was nothing in the withdrawal to indicate the Tribunal should not have acted on it, and even on 28 January 2022, when I said that I would issue the Dismissal on Withdrawal Judgment, nothing was said to suggest this was not the Claimant's intention.

8 Rule 51 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, provides:

> *Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.*

9 Rule 52 provides:

> *Where a claim or part of it has been withdrawn under rule 51, the Tribunal shall issue a judgement dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless*
> *(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the tribunal is satisfied that there would be legitimate reason for doing so, or*
> *(b) the tribunal believes that to issue such judgement would not be in the interests of justice.*

10 According to the rules, once a withdrawal is received, Rule 52 obliges the Tribunal to issue the dismissal judgment which I did. There was no indication that the Claimant wished to reserve any rights to bring a further action nor was there any basis to consider that to issue such a judgment would not be in the interests of justice.

11 I have had regard the case of Campbell v OCS Group UK Limited and another UKEAT/0188/16. That case suggests there are two steps to consider. The

first is the making of the dismissal judgment and the second is whether there should be a reconsideration. I have explained why I am satisfied the making of the judgment was mandated by the rules. I also considered carefully if there was a basis for a reconsideration, but this Claimant's position seems to me to be very different to the circumstances highlighted in that case by Simler DBE P J. In that case there was evidence before the Tribunal showing that the Claimant was not withdrawing on the merits but under stress. Moreover, the Claimant in that case was unrepresented at the time. In this case, the Claimant held himself out as represented at the relevant time, according to the emailed withdrawal, and says himself he acted as advised by his representative. His email, and attachment were clear and unequivocal about the matter. He sent in another document which shows he was clearly aware he was no longer pursing a series of claims. I therefore refuse to reconsider the dismissal judgment.

12 I note that although the application for reconsideration is specifically drafted to refer to a judgement, the Claimant is also indicating dissatisfaction with the Tribunal's order. I have therefore taken time to assess the Claimant's references to the order. It appears the Claimant is suggesting that I should obliterate not only his withdrawal but also all other orders made on 28 January 2022. That would not be in the interests of justice for either party. On 28 January 2022, much of the time was taken up by an effort to identify the issues in the case which are set out in the list of issues attached to the Tribunal order made on that date. Significant work was done to clarify the claims and directions were given which reflected the claims which could be identified at that time. While it was clear from the Claimant's withdrawal email and attachment that he wished to pursue a claim for failure to comply with the duty to provide reasonable adjustments against the First Respondent, we were unable to identify within the Claimant's claim form sufficient about that claim to formulate that issue. I allowed the Claimant a lengthy break to discuss the matter with his Counsel. After the break, Counsel explained she could not continue.

13 It was clear that if there was to be a claim for reasonable adjustments recorded in the list of issues, it required the Claimant to amend and for that he needed to apply to amend. I continued the hearing and heard the Claimant's application to amend. I allowed the Claimant breaks and also allowed him to rely on references to the reasonable adjustments claim in other documents, including a previous draft amendment document which he had prepared, which he had notified the Tribunal that he had withdrawn and a document he called further and better particulars. In doing so I endeavoured to give the Claimant the fullest opportunity to apply to amend to clarify this claim.

14 As noted above, the Claimant had unequivocally withdrawn specific claims. The claim for failure to make reasonable adjustments could not be formulated on the face of the Claimant's ET1 and remained unclear in the later wording he had supplied. Considering the relevant considerations about the prejudice to each party, my conclusion was that permission to amend should be refused. The Claimant now says he was not well enough to continue at that time. He acknowledges that he did not ask for an adjournment, but he suggests he should have been offered one. He relies upon his medical situation saying that he is under strict instructions not to work past 2 pm but has provided no specific medical evidence with his reconsideration application to support an assertion that he was not fit enough to cope on the day. In any event the hearing was listed for a full day by E J Sharma in September 2021 and the Claimant had never said that he would

not be able to manage a full day's hearing. The Claimant 's assertions that he was in considerable pain at the time are not sufficient for these purposes. The Claimant has been in tribunal hearings of this type a number of times. He spoke with me at length about his claim during the afternoon and gave me explanations of events, and yet did not once say he was in pain or having difficulty.

15 The main thrust of the Claimant's reconsideration application is that he objects to his disability claim being ineffective. The reason for this is that the only residual part of it was a claim for reasonable adjustments, which as I have noted required an amendment which was not granted. In the event the proposed amendments were unclear and the prejudice to the Respondent outweighed the prejudice to the Claimant. For reasons I have set out in some detail in the order, leave to amend was not granted. The draft amendments we treated as the basis for his application had been prepared by the Claimant after the last hearing with EJ Sharma on 14 September 2021. The Claimant took some time to produce that draft amendment, and then withdrew it, but it was nevertheless considered. Another part appeared in the Claimant's response to a request for further and better particulars but was a new point. Again, the Claimant had plenty of time to prepare his proposed amendment. The Claimant said it was always his intention to provide further particulars of his reasonable adjustments claim as soon as his grievance was concluded, which was about February 2021. Despite a very long period of time since that time, there is no wording which sets out that claim in a comprehensible fashion. There is no basis for reconsideration of the refusal of the application to amend.

16 The Claimant incorrectly suggests his disability claim was determined without a hearing. He complains about the bundle prepared not including any disability documentation. The disability issue was never determined. It was not a matter before the Tribunal on 28 January 2022. It was not necessary to include disability documents in the bundle. The reason the disability claim has fallen away is that the Claimant withdrew all disability claims apart from maintaining that he had reasonable adjustments claim. When the Claimant failed to get leave to amend, that left him without any disability claims. The victimisation claim is based on the Claimant's protected characteristic of race.

17 Put simply, I refused the amendment application because despite having taken about a year after his grievance to consider how he argued this claim, the Claimant did not provide any wording which could be used to formulate the reasonable adjustment issues so that the Respondent and the Tribunal could properly understand them and there was a greater risk of prejudice to the Respondent in allowing the vague amendments than in refusing them. There is nothing in the Claimant's application which provides a basis to reconsider that position. In the circumstances, the reconsideration is refused.

Employment Judge N Walker
Date 17 February 2022
JUDGMENT SENT TO THE PARTIES ON

18 February 2022

FOR THE TRIBUNAL OFFICE