



EMPLOYMENT TRIBUNALS

Claimant: Ms Sheryl Grout

Respondent: Go Train Limited (named in the claim form as Go-Train Ltd)

JUDGMENT

1. The claimant's email of 16 September 2022 asking for a reconsideration is treated as an application under regulation 10A(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("regulation 10A(2)") for the following decisions of Legal Officer Metcalf to be considered afresh:
 - 1.1 the decisions recorded in the Tribunal's letter dated 7 September 2022;
 - 1.2 the decisions that resulted in the Tribunal issuing a judgment under rule 52 on 1 September 2022.
2. Considering the matter afresh, I [the Employment Judge]:
 - 2.1 uphold the decisions that: the claimant's emails of 15 August 2022 constituted a withdrawal of the claim under rule 51; the claim should be dismissed under rule 52;
 - 2.2 set aside the decision to rescind the rule 52 judgment.
3. The claim therefore remains dismissed, pursuant to the Judgment sent to the parties on 1 September 2022; alternatively, if and to the extent this is what regulation 10A(2) requires, I dismiss it myself by this Judgment.

REASONS

4. Having gone through ACAS early conciliation from 25 July to 3 August 2022, the claimant presented her claim form on 11 August 2022 electronically. She received an automatic acknowledgment by email giving her the claim reference number 132022780200.

5. Precisely what Tribunal complaints the claimant was making is not entirely clear to me. However, they included a wrongful dismissal / notice pay claim, a claim for breach of the duty to make reasonable adjustments, and victimisation under the Equality Act 2010.
6. On 12 August 2022, if not before, the claim form arrived at the Employment Tribunals in Birmingham, from where claims in the Midlands (West) Employment Tribunals region are administered.
7. On Sunday, 14 August 2022, the claimant emailed CFTBAUSupport@justice.gov.uk, forwarding the email acknowledgment of her claim, with the following: "*May I respectfully advise you of: WITHDRAWAL OF CLAIM AS BELOW: [original emphasis] I write to confirm that I wish to withdraw my claim as I have now secured a 6 month temporary contract with a teaching agency. || Claim number: 132022780200*". The "Subject" of the email was, "*Withdrawal of Employment Tribunal Claim number: 132022780200*".
8. I am not familiar with the email address "CFTBAUSupport@justice.gov.uk" and nothing comes up when I do a Google search for it. However, I think I can safely assume that it is, or that the claimant thought it was, an address of the office where electronically submitted claims are processed.
9. On 15 August 2022 at 8.06 am the claimant emailed the Tribunal office in Birmingham, forwarding copies of the email acknowledgment of her claim of 11 August 2022 and of her email of 14 August 2022, with "*Withdrawal of Employment Tribunal Claim number: 132022780200 pre-tribunal number*" as the "Subject", and stating: "*I completed and forwarded my claim to you on 11/8/2022 - I do not believe you have sent it to the Respondent, yet. May I please WITHDRAW my claim as detailed below.*" The reference to what was "*below*" was to the forwarded emails of 11 and 14 August 2022.
10. The claimant evidently telephoned the Tribunal office in Birmingham later that morning, because at 10.30 am she sent a further email, forwarding her earlier email of that day as well as the emails of 11 and 14 August 2022, and stating, "*Further to my telephone call to your office this morning, as requested I am sending you **notification of withdrawal of my claim**. [original emphasis]*". This time, the "*Subject*" of the email included the claim number 1303560/2022.
11. The Tribunal administration appears not to have acted on the claimant's emails of 15 August 2022 until around 1 September 2022.
12. Also on 15 August 2022, the Tribunal sent out an acknowledgment of the claim, a 'response pack' to the respondent, and a notice of preliminary hearing for case management. These were sent out by post.
13. On 18 August 2022, the claimant emailed the Tribunal, copying-in (amongst others) Acas and someone with an "@go-train.co.uk" email address (presumably someone at the respondent) stating, "*Since making application to the Tribunal I have this morning received confirmation of the following: ... I have been given a temporary offer of employment subject to receipt of a satisfactory reference from my former employer [the respondent] ... should [the respondent] be willing to cooperate with my request for an agreed reference, and make good my loss of earnings for the month of August 2022, I*

would be willing to withdraw my claim". It could be argued that this email was covered by so-called 'without prejudice privilege' and therefore should have been ignored by the Tribunal. However, it was addressed to the Tribunal rather than to the respondent, neither side has suggested it was implicitly without prejudice, and I think I ought, in fairness to the claimant, to read it and take it into account when deciding something as important as whether her claim has been withdrawn under rule 51 and should be dismissed under rule 52, which is essentially what I am deciding, just in case it makes a difference. In fact, as I shall explain shortly, it makes no difference at all.

14. Of note about the claimant's email of 18 August 2022 is that she made no reference to the fact that she had already withdrawn her claim. She did not, for example, suggest she had made a mistake when she wrote her emails of 14 and 15 August 2022, or anything of that kind.
15. There was further correspondence from the claimant, the respondent, and the Tribunal in August 2022 which didn't mention the withdrawal of claims. The only part of that correspondence that is to any extent relevant for present purposes is an email of 25 August 2022 from the claimant to the Tribunal, forwarding an email sent from the claimant to the respondent of 22 August 2022, to the effect that the respondent had provided a reference on her to a recruitment company suggesting she had been dismissed for gross misconduct and that this had cost her an employment opportunity.
16. On 1 September 2022, Legal Officer Metcalf issued a Judgment dismissing the claim upon withdrawal, in accordance with rules 51 and 52. In doing so, he had evidently decided: that the claimant had withdrawn her claim in accordance with rule 51; that rule 52 applied, and that a Judgment dismissing the claim should be issued in accordance with that rule. When he made those decisions, he had not seen the claimant's email of 25 August 2022.
17. Later on 1 September 2022, amongst other things, the claimant telephoned the Tribunal office stating that the claim had not been withdrawn and referring to her email of 25 August 2022, which she then provided another copy of.
18. On 7 September 2022, a letter was written to the claimant at Legal Officer Metcalf's direction to the effect that:
 - 18.1 the claim had been withdrawn under rule 51;
 - 18.2 once a claim has been withdrawn, it comes to an end and the claimant may not resurrect it;
 - 18.3 however, the judgment should nevertheless be rescinded.
19. The letter contained a statement of the claimant's right to make an application under regulation 10A(2). After some further correspondence between the claimant and the Tribunal which took the matter no further, the claimant emailed the Tribunal (not copying-in the respondent in breach of the Rules; but that is neither here nor there) stating, "*I am currently awaiting legal advice through cover from my house insurance policy - on this*

basis may I please request a reconsideration of my case until I hear from them". I take this to be an application as set out in paragraph 1 of the Judgment, above.

20. Subject to the time limit, there is an absolute right to have a decision considered afresh under regulation 10A(2). My understanding of "*considered afresh by an Employment Judge*" is that when dealing with the application I should make whatever decisions the Legal Officer made that are being challenged from scratch, as if I had been standing in the Legal Officer's shoes when he made the decision. In other words, I don't have to decide whether I think the Legal Officer Metcalf was right or wrong; I can effectively ignore what he decided.
21. Rules 51 and 52 are as follows:

WITHDRAWAL

End of claim

51. *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.*

Dismissal following withdrawal

52. *Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment 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 a judgment would not be in the interests of justice.

22. Pursuant to rule 51, if a claimant writes to the tribunal withdrawing her claim, the claim comes to an end. The tribunal has no power to revive or reinstate a withdrawn claim. See Khan v Heywood & Middleton Primary Care Trust [2006] EWCA Civ 1087. That was a case under the old Tribunal rules, but it remains good authority for this general proposition: once withdrawn, a claim cannot be reinstated.
23. I also note, in support of a similar proposition, Campbell v OCS Group UK Ltd & Anor [2017] ICR D19, which was decided under the 2013 Rules. In that case, the claimant emailed late in the evening before what was to have been day 2 of a five-day final hearing, stating, "*I am writing with regret that I am withdrawing my case ... due to ill health and under medical advice*". That email was sent on 14 December 2015. The claimant didn't attend the following day, and, on the day after that, the claim was dismissed pursuant to rule 52. The judgment dismissing the claim in its entirety was dated 16 December and was sent to the parties on the 17th. By a letter dated 17 December 2015, the claimant applied for reconsideration of the judgment and requested that her withdrawal be rescinded. In the EAT, the President, as she then was, decided that the effect of rule 51 was that withdrawal brings the proceedings to an end, and that there is no jurisdiction for

a notice of withdrawal to be rescinded or revoked, and no scope at all under the Rules for the claimant to revive those claims.

24. The first issue is: should the claimant's emails of 14 and 15 August 2022 be taken as a withdrawal of the claim under rule 51? I think they should. There is no ambiguity at all in them. The fact that the claimant has subsequently sent emails suggesting she did not want to withdraw the claim is neither here nor there.
25. The second thing I have to decide is whether, in light of that withdrawal, it would be appropriate for the claim to be dismissed under rule 52. I have no hesitation in deciding that it would be. Rule 52(a) does not apply. And in accordance with rule 51 and the Khan and Campbell cases mentioned above, the claim came to an end when the claimant withdrew it. Not dismissing it would be pointless and would not help the claimant at all, because there is no power to reinstate it.
26. It follows that I disagree with Legal Officer Metcalf's decision to "rescind" the Judgment he issued. I don't think Legal Officers have the power to rescind judgments. They don't have the power to reconsider judgments under rules 70 to 73 as that power is reserved to Employment Judges. The only other place containing a power to set aside / revoke / rescind judgments is regulation 10A(2), again the preserve of Employment Judges. In any event, I see no valid basis for not dismissing the claim in accordance with rule 52.
27. For those reasons, I endorse the Judgment of Legal Officer Metcalf dismissing the claim. It is not entirely clear to me whether regulation 10A(2) requires me to issue a Judgment myself dismissing the claim again. If and to the extent it does, that is what I am doing.

Employment Judge Camp
16 September 2022