



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Browne

**Respondent:** The partners practicing as the firm Hugh James

**HELD AT:** Wrexham (in chambers)      **on:** 4 June 2024

**BEFORE:** Employment Judge T. Vincent Ryan

## REPRESENTATION:

**Claimant:** Written application

**Respondent:** Written submission

# RECONSIDERATION JUDGMENT

The judgment of the Tribunal is that the judgment of 19 January 2024, sent to the parties on 22<sup>nd</sup> January 2024, is varied to the effect that the Claimant's withdrawn claim of Breach of Contract is not dismissed; this variation does not affect the dismissal of the other withdrawn claims of Unfair Dismissal, Sex Discrimination and Victimisation.

## REASONS

1. On 23 October 2023 the Claimant's solicitor wrote to the Tribunal in response to orders made by Employment Judge Moore sent to the parties on 19 September 2023, in the following terms:

"Further to those orders we can confirm, on behalf of the Claimant, the following claims are withdrawn:

constructive unfair dismissal;

sex discrimination;

victimisation: and

breach of contract.

..... The Claimant requests her claims of breach of contract are not dismissed as she wishes to advance the same in the County Court instead.

This is due to the value of the same and cap on compensation imposed at the Tribunal.”

2. I conducted a preliminary hearing on 19 January 2024. Both parties were legally represented.
3. At the outset of the hearing, I enquired whether the withdrawn claims had been formally dismissed. I was informed that they had not been. I confirmed that I would dismiss them by way of a judgment (apart from the minutes of the preliminary hearing).
4. I did not refer back to the withdrawal email. No one raised the point that the breach of contract claim was to be treated differently from the other withdrawn claims. This was an oversight.
5. A judgment was therefore promulgated dismissing the said claims upon withdrawal, but without affecting the Claimant’s continuing Equal Pay claim.
6. By email dated 22 January 2024 the Claimant’s representative applied for correction of the judgment or alternatively reconsideration, and the variation of the judgment to reflect what was said in the letter 23<sup>rd</sup> of October 2023, confirming that the breach of contract claim was not dismissed.
7. By emails dated 22 January 2024 and 9 February 2024 the Respondent has opposed the Claimant’s application. The Respondent does not require a hearing and consents to my dealing with the matter on the papers.
8. The Respondent’s point is that it says I cannot consider the interests of justice without having a better understanding of the Claimant’s breach of contract claims, and that to date the Claimant has not specified the claims.
9. Rule 51 ETs (Constitution & Rules of Procedure) Regulations 2013 (and all reference to a Rule of the Rules is a reference to these Regulations) provides that where a Claimant informs the Tribunal that a claim, or part of it, is withdrawn, the claim, or part, comes to an end (subject to any application for costs).
10. Rule 52 provides that 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 there would be a legitimate reason for doing so or (b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.
11. In its said email of 23 October 2023, the Claimant’s representative informed the Tribunal that a number of claims, including claims of breach of contract, were being withdrawn. They therefore came to an end at that time.

12. In the same email the Claimant's representative expressed the wish to reserve the right to bring a further breach of contract claim, asking that the claim not be dismissed by the Tribunal, and explaining that the reason for this was the value of the breach of contract claim and the "cap" on compensation imposed at the Tribunal.
13. At the hearing on 19 January 2024, I asked a generalised question in ignorance of the full contents of the withdrawal email of 23 October 2023. The Claimant's representative merely confirmed it was appropriate for a dismissal judgment to be issued without further specification.
14. The effect of the email of 23 October 2023 was to bring the breach of contract claim and other stated claims to an end. They did not come to an end because of the question I asked, or the answer I was given, at the hearing on 19 January 2024.
15. It follows therefore, that, the claim having been withdrawn, the Tribunal was obliged to issue a judgment dismissing it unless either of two conditions was met. The Tribunal would not have to dismiss the withdrawn claims in circumstances where the Claimant had expressed, at the time of withdrawal, her wish to reserve the right to bring such a further claim, where the Tribunal is satisfied there was a legitimate reason for doing so. Other than for that reason the Tribunal would not have to issue a judgment if it was satisfied that to do so would be contrary to the interests of justice.
16. At the time that the Claimant brought her breach of contract claim to an end, she expressed the wish to reserve the right to bring a further claim of breach of contract requesting therefore that her claim should not be dismissed. The stated reason related to the value of the potential claim and the limits imposed at the Tribunal on breach of contract claims; this would be a legitimate reason for the request and reservation. The requirement of rule 52 (a) is satisfied. It is not a requirement to further satisfy rule 52 (b), save insofar as the Tribunal is always obliged to act the interests of justice in accordance with the overriding objective.
17. I understand the Respondent's interest in knowing more about the potential civil proceedings alleging breach of contract. Rules 51 and 52 do not require the Tribunal to forensically examine what may at this stage be only a potential, not crystallised or formulated, claim of breach of contract. The Tribunal only needs to know that there has been such a reservation with a legitimate reason.
18. The financial limit on the recovery of awards for claims of breach of contract is a legitimate reason for a party to want to consider carefully in which venue any claim ought better for them to be issued. Even if the Claimant had provided further details, it would be inappropriate for the Tribunal to make an assessment of merits, let alone findings in relation to the value of the claim or its merits. It is sufficient for these purposes that the Claimant had a legitimate reason for reserving the right to bring later breach of contract proceedings and for requesting that the withdrawn claim should not be dismissed.

19. The Claimant's application for reconsideration is granted, I vary the said judgment as requested and confirm the remainder of it.

Employment Judge T.V. Ryan

Date: 4 June 2024

JUDGMENT SENT TO THE PARTIES ON 4 June 2024

FOR THE TRIBUNAL OFFICE Mr N Roche