



EMPLOYMENT TRIBUNALS

Claimant: Miss S Bahra

Respondent: Leeds Trinity University

JUDGMENT

1. The claimant's email of 24 August 2024 asking for a reconsideration is to be treated as an application under Regulation 10A (2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for the decision of Legal Officer Nuut recorded in the Judgment of 16 August 2024 (*the Judgment*) to be considered afresh.
2. Considering the matter afresh, the claimant's claim stands dismissed pursuant to Rule 52 of Schedule 1 to the 2013 Regulations.
3. The claim therefore remains dismissed pursuant to the Judgment. Alternatively, the Tribunal dismisses the claim by this Judgment.

REASONS

1. Having gone through early conciliation between 17 March 2024 and 21 March 2024 (as required by the Employment Tribunals Act 1996) the claimant presented her claim form on 18 April 2024.
2. The respondent presented their response to the claim by presenting form ET3 accompanied by grounds of resistance. The respondent's solicitor pleaded that the claims made by the claimant lack clarity. They highlighted that further information of the claims was required.
3. The matter was then reviewed by Employment Judge Davies. She listed the case for a hearing on 6 September 2024. This was to consider the several issues in the letter sent by the Tribunal to the parties on 26 June 2024 (and which accompanied the notice of hearing of the same date).
4. On 23 July 2024, the claimant made an application for a postponement of the hearing. On Friday 26 July 2024, the respondent's solicitor emailed to object to her application. Shortly after the respondent's solicitor's email, the claimant (also

on 26 July 2024) renewed her application for postponement. (The Tribunal had not decided upon her postponement application at this stage).

5. Then, on 29 July 2024, the Tribunal received an email from the claimant which read as follows:

“Subject: re 1802409/24 – withdraw grounds of health

Dear Courts

Re Withdraw on ground of health

In reference to the medical evidence that I sent you on Friday [26 July 2024] and on the grounds of my health and needed [sic] to focus on my health and the time needed to recover from my injury, I would like to withdraw my case. I need the headspace to focus on my recovery/rehabilitation, as that’s what’s important right now.

I have taken advice from lawyers and they have advised me on a case for disability discrimination, however, I would like to raise things directly with employer via the union and give them another chance to work with me on this. Which I believe we can do.

If all else fails, and I feel I have experienced further discrimination, then I think it’s fair to seek help from the courts.

I am therefore withdrawing my case as I need time to recover and focus on me.

Thank you for all your help. “

6. On 8 August 2024, the Tribunal wrote to the claimant to acknowledge the withdrawal of her claim. She was notified that the file was to be retained until August 2025 and would then be destroyed. The Tribunal notified the parties that the hearing listed for 6 September 2024 would now not take place.
7. On 23 August 2024, the Tribunal issued the Judgment. This was a ruling by Legal Officer Nuut that the claim having been withdrawn by the claimant was dismissed under rule 52 of schedule 1 to the 2013 Regulations. The Judgment was endorsed with notice that pursuant to Regulation 10A (2) of the 2013 Regulations, because the decision had been made by a Legal Officer, a party may apply in writing to the Tribunal for the decision to be considered afresh by an Employment Judge. Such an application must be made within 14 days after the date that the judgment or decision is sent to the parties.
8. On 24 August 2024, the claimant applied for reconsideration of the Judgment. Plainly, her application was made within the time limit in Regulation 10A and therefore may be considered.
9. The claimant sets out her reasons for reconsideration. These mainly appear to be focused upon her health issues. Reference is also made to issues such as discrimination on the grounds of race and whistleblowing.
10. By rule 51 of Schedule 1 to the 2013 Regulations, where a claimant informs the Tribunal, either in writing or during 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.
11. By rule 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 reasons for doing so; or
 - (b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.
12. Legal Officer Nuut plainly took the view that the email of 29 July 2024 constituted unequivocal withdrawal of her claim by the claimant. Upon that basis, she proceeded, as is required by rule 52, to issue the Judgment dismissing the claim. She took the view that the claimant had not expressed a wish at the time of withdrawal to reserve the right to bring a further case raising the same or substantially the same complaint.
 13. Subject to the time limit in regulation 10A (2) (with which the claimant has complied), there is an absolute right to apply to have a decision of a Legal Officer considered afresh by an Employment Judge. This is not an application for reconsideration under rules 70 to 73 of Schedule 1 to the Regulations. Those rules concern reconsideration of judgments from an Employment Judge in the interests of justice. Regulation 10A (2) is in wider terms. The question for the Employment Judge is not whether Legal Officer Nuut was right or wrong. The Employment Judge, upon an application for a fresh consideration of a Legal Officer's decision or judgment, starts from scratch and can effectively ignore what the Legal Officer decided.
 14. Pursuant to rule 51, where a claimant writes to the Tribunal withdrawing a claim, the claim comes to an end. The Tribunal cannot re-instate or revive the withdrawn claim. Authority for this proposition is **Khan v Heywood and Middleton Primary Care Trust [2006] EWCA Civ 1087**. However, unless the complaint is dismissed, it is open to a claimant to present a fresh claim about the same subject matter as the withdrawn claim. However, once the claim is dismissed, then that is the end of the matter (subject to any successful reconsideration or appeal against the Employment Judge's decision).
 15. In the Tribunal's judgment, there is no ambiguity in the claimant's email of 29 July 2024. She says four times (if the subject heading is included) that she withdraws the claim. She did not express a wish to reserve the right to bring a further claim raising the same or substantially the same complaint. What she says is that should she feel that she has experienced further discrimination, then it would be "*fair to seek help from the courts.*" The word "*further*" imports a consideration of additional acts than those the subject of the claim.
 16. Looking at the matter afresh, the claimant's withdrawal was unequivocal. The effect of rule 51 when read with rule 52 is that the claim must stand dismissed absent the exceptions provided for in rule 52 (referred to in paragraph 11 above and neither of which apply). The Tribunal's judgment is that the claim stands dismissed on withdrawal and in the alternative and in so far as is necessary that Legal Officer Nuut's Judgment to that effect is upheld.

Employment Judge Brain

Date:

13 September 2024

Sent to the parties on:

23 September 2024

For the Tribunal:

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>